



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; Other issues; and to recover the filing fee from the tenants for the cost of this application.

The tenants and an agent for the landlord (the landlord) attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the tenant's security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2005. Rent for this unit is now \$1,271.00 per month due on the 1st of each month. The tenants paid a security deposit of \$480.00 on March 10, 2005.

The landlord testified that the tenants failed to pay all the rent that was due on March 01 and April 01, 2016 leaving an unpaid balance of \$2,542.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on April 12, 2016. This was posted on the tenants' door and was deemed to have been served three days after posting. The Notice informed the tenants that they had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on April; 22, 2016. The tenants did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenants have failed to pay rent for May and June, 2016 of \$2,542.00. The total amount of unpaid rent is now \$5,084.00.

The landlord has applied to retain the tenant's security deposit of \$480.00 in partial payment of the rent arrears. The landlord has also applied for an Order of Possession to take effect on June 30, 2016.

The tenant DC gave testimony on behalf of both tenants and agreed that they have not paid their rent for March, April, May and June, 2016. DC testified that they have had some family problems and due to these they have not been able to pay the rent.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed evidence before me that there is outstanding rent for four months of **\$5,084.00**. Consequently, it is my decision that the landlord is entitled to recover this amount and will receive a Monetary Order pursuant to s. 67 of the *Act*.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$480.00** plus accrued interest of **\$16.99** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$100.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent	\$5,084.00
Filing fee	\$100.00
Less security deposit and accrued interest	(-\$496.99)
Total amount due to the landlord	\$4,687.01

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting on April 15, 2016. The effective date of the Notice is amended to April 25, 2016 pursuant to s. 53 of the *Act*. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlord an Order of Possession effective, as requested, for June 30, 2016 pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,687.01** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the tenants; if the tenants fail to comply with the Order, The Order is enforceable through the Provincial (Small Claims) Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favor of the landlord effective on June 30, 2016. This Order must be served on the tenants; if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 07, 2016

Residential Tenancy Branch