



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord provided undisputed affirmed evidence that the tenants were both served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 7, 2016 and has provided copies of both Canada Post Customer Receipt Tracking numbers as confirmation. I accept the undisputed affirmed evidence of the landlord and find pursuant section 90 of the Act that both tenants were properly served.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed testimony that there was no signed tenancy agreement, but that this tenancy began on January 1, 2016. The landlord also stated that monthly rent was \$800.00 payable on the 1st day of each month and that a \$400.00 security deposit was paid.

The landlord states that the tenants were served with a 10 Day Notice to End Tenancy (the 10 Day Notice) dated August 10, 2016 by posting it to the rental unit door on August 10, 2016. The 10 Day Notice states that the tenants failed to pay rent of \$2,400.00 and that the 10 Day Notice sets out an effective end of tenancy date of August 20, 2016.

The landlord clarified that although the 10 Day Notice submitted did not contain the due date of when rent was payable that monthly rent was always due on the 1st day of each month. The landlord stated that the original copy in possession of the landlord did contain the due date of August 1, 2016.

The landlord stated that as of the date of this hearing the tenants still occupy the rental unit and have paid no rent.

The landlord states that the tenants failed to pay rent for:

\$800.00	Unpaid Rent June 2016
\$800.00	Unpaid Rent July 2016
\$800.00	Unpaid Rent August 2016
\$800.00	Unpaid Rent September 2016
\$800.00	Unpaid Rent October 2016
\$800.00	Unpaid Rent November 2016

The landlord seeks an order of possession for unpaid rent and a monetary order for \$4,800.00.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served with the 10 Day Notice dated August 10, 2016 by posting it to the rental unit door in accordance with the Act.

Section 46 (5) of the Act states that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit.

I find based upon the undisputed evidence of the landlord that the tenants have not paid any rent as of the date of this hearing and that no application for dispute was filed with the Residential Tenancy Branch. The tenants are conclusively presumed to have accepted that the tenancy ended as of August 20, 2016. The landlord has established sufficient evidence to obtain an order of possession.

I also accept the undisputed affirmed evidence of the landlord and find that the tenants have failed to pay rent of \$800.00 per month starting June 2016 to November 2016 (6 months) totalling, \$4,800.00.

The landlord seeks to retain the \$400.00 security deposit in partial satisfaction of the claim. I accept the landlord's undisputed affirmed evidence that a \$400.00 security deposit was paid at the beginning of the tenancy. I authorize the landlord to retain the \$400.00 in partial satisfaction of the claim.

I also find as the landlord has been successful in the application for dispute that the \$100.00 filing fee shall be recovered from the tenant.

The landlord has established a total monetary claim of \$4,500.00 which consists of:

\$4,800.00	Unpaid Rent
-\$400.00	Offset Security Deposit
\$100.00	Recover Filing Fee

Conclusion

The landlord is granted an order of possession for unpaid rent.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord is also granted a monetary order for \$4,500.00.

This order must be served upon the tenants. Should the tenants fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial 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: November 25, 2016

Residential Tenancy Branch