



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding J.V.C. Development Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55; and
2. A Monetary Order for unpaid rent - Section 67.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on April 8, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on April 13, 2017. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Background and Evidence

The tenancy started several years ago under a different landlord. The current Landlord became the Landlord in 2013. A new tenancy agreement was entered into between the Parties with the tenancy starting in January 2017. Rent of \$1,580.00 is payable

monthly. The Parties agreed to transfer the pre-existing security deposit paid on September 18, 2009 to the current agreement.

The Tenants failed to pay rent for January, February and March 2017 and on March 9, 2017 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenants did not dispute the Notice and did not pay the outstanding rent. The Tenant also paid no rent for April 2017. The Landlord does not know whether the Tenants have moved out of the unit and the last date the Landlord heard from the Tenants was May 5, 2017 when the Tenants informed the Landlord by email that they were in the process of moving out. No keys have been returned to the Landlord.

Analysis

Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Based on the undisputed evidence of the Landlord I find that the Tenants were given the Notice and the Tenants neither paid the outstanding rent nor filed an application to dispute the Notice within the allowed time. As a result and as the Landlord is not certain that the Tenants have moved out of the unit I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that 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. Based on the undisputed evidence of the Landlord I find that the Landlord has substantiated that the Tenants failed to pay rent for January, February, March and April 2017. The Landlord is therefore entitled to \$6,320.00. The Landlord

remains at liberty to make a claim in relation to any further rents that the Tenants may owe.

Deducting the security deposit of \$690.00 plus zero interest from the entitlement leaves \$5,630.00 owed by the Tenants to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant 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.

I order that the Landlord retain the **deposit** and interest of \$690.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$5,630.00**. If necessary, this order may be filed in the Small Claims 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: May 18, 2017

Residential Tenancy Branch