



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, MNSD, FF

Introduction

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

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 10 minutes. The landlords' agent, SA ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to speak on behalf of both landlord companies named in this application, as an agent at this hearing (collectively "landlords") and she provided a written authorization to this effect.

The landlord testified that the tenants were each served separately with the landlords' application for dispute resolution hearing package on April 20, 2017, by way of posting to the rental unit door, and on April 28, 2017, by way of registered mail. The landlords provided two Canada Post receipts and tracking numbers for the mailings. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' application on May 3, 2017, five days after each of their registered mailings.

The landlord confirmed that the tenants were served with the landlords' 1 Month Notice to End Tenancy for Cause, dated March 16, 2017 ("1 Month Notice") and the landlords'

10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 16, 2017 ("10 Day Notice"), both on March 16, 2017, by way of registered mail. The landlords provided a Canada Post receipt and tracking number for the mailing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with both the landlords' 1 Month Notice and 10 Day Notice on March 21, 2017, five days after their registered mailings.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or for cause?

Are the landlords entitled to a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 15, 2016. Monthly rent in the amount of \$1,850.00 is payable on the first day of each month. A security deposit of \$925.00 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing. The tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice for unpaid rent of \$70.00 due on March 1, 2017. The effective move-out date on the notice is March 21, 2017. The landlords seek an order of possession, a monetary order of \$3,770.00 for unpaid rent, and recovery of the \$100.00 filing fee. The landlord said that the tenants failed to pay rent of \$70.00 for March 2017 and \$1,850.00 for each of April and May 2017.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on March 1, 2017, within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on March 31, 2017, the corrected effective date on the 10 Day Notice.

In this case, this required the tenants and anyone on the premises to vacate the premises by March 31, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

As I have issued an order of possession for cause based on the 10 Day Notice, it is not necessary for me to explore the landlords' application for an order of possession for cause based on the 1 Month Notice. Accordingly, this portion of the landlords' application is dismissed with leave to reapply.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent totalling \$3,770.00 from March to May 2017, inclusive. I find that the landlords are entitled to the entire month of rent for May 2017, despite the fact that this hearing was held on May 19, 2017, because rent is due on May 1, 2017, as per the parties' tenancy agreement. Further, the landlords may be required to serve the tenants with the order of possession and possibly enforce it, enter the rental unit to inspect and potentially repair any damages and attempt to re-rent the unit.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenants.

The landlords continue to hold the tenants' security deposit of \$925.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting

provisions of section 72 of the *Act*, I order the landlords to retain the tenants' entire security deposit of \$925.00 in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant(s). Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlords to retain the tenants' entire security deposit of \$925.00 in partial satisfaction of the monetary claim.

I issue a monetary order in the landlords' favour in the amount of \$2,945.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The landlords' application for an order of possession for cause based on the 1 Month Notice, dated March 16, 2017, is dismissed with leave to reapply.

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 19, 2017

Residential Tenancy Branch