



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities;
- an application to keep all or part of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Only the landlord attended the hearing. The landlord was represented at the hearing by Property Manager, D.L. (the "landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was posted on the front door of the rental unit on March 27, 2017. I find that in accordance with sections 88 and 90 of the *Act*, the tenants were served with the 10 Day Notice on March 30, 2017.

The landlord testified that the tenants were individually sent copies of the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") along with evidentiary packages by way of Registered Mail on April 27, 2017. Copies of the Canada Post tracking numbers were provided to the hearing. The landlord confirmed receipt of one the package by tenant, K.D., but explained the other package addressed to S.M., was returned to the landlord. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's dispute resolution hearing and evidentiary packages on May 1, 2017.

At the outset of the hearing, the landlord informed that he was no longer pursuing the Monetary Order as the tenant had paid all outstanding money on April 20, 2017.

Pursuant to section 64(3)(c) of the *Act* I amend the landlord's application to reflect this change and request for a withdrawal of the Monetary Order for \$750.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenants?

Is the landlord entitled to apply for a return of the security deposit?

Background and Evidence

Sworn testimony was provided by the landlord that this tenancy began on March 1, 2017. Rent was \$1,800.00 due on the first of the month. A \$900.00 security deposit continues to be held by the landlord. A copy of the tenancy agreement was also provided to the hearing as part of the landlord's application.

The landlord stated that he is seeking an Order of Possession based on rent being late twice, during the first two months of the tenancy.

The landlord explained that while the tenant did eventually pay the amount sought by the landlords on the 10 Day Notice issued to the tenants on March 27, 2017, it was paid late and beyond the five days allowable. The tenants paid the rent on April 20, 2017 in its entirety. A receipt was issued to the tenants *for use and occupancy only* and it was explained to the hearing, that the landlord did not wish to continue this tenancy.

Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by April 6, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As no money remains outstanding, the landlord cannot at this time, receive a Monetary Order for the unpaid rent. Any applications concerning the security deposit must be made following the conclusion of the tenancy.

As the landlord was successful in their application, they are entitled to recover the \$100.00 filing fee from the tenants pursuant to section 72 of the *Act*. In place of a Monetary Order, the landlord's may withhold \$100.00 from the tenants' security deposit.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within 2 day of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord's application for a Monetary Order for unpaid rent was withdrawn.

The landlord's application to retain the security deposit is dismissed with leave to re-apply.

The landlord may retain \$100.00 from the tenant's security deposit at the conclusion of the tenancy in satisfaction for a return of the filing fee.

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 29, 2017

Residential Tenancy Branch