



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacifica Housing Advisory Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted that they took possession of the rental property from the previous owner effective April 1, 2017 and the previous owner had left a "rent roll/tenant listing" identifying the male respondent as tenant with rent in the amount of \$800.00 per month due on the 1st of each month and a security deposit of \$400.00 paid on July 1, 2016. The landlord submitted that upon an inspection of the rental unit on April 12, 2017 the female respondent indicated that she too was a tenant.

The landlord submitted into evidence two letters – one dated March 29, 2017 and one dated April 24, 2017 with specific instructions on the payment of rent. The March 29, 2017 advised that the tenants may pay the onsite manager, Cherry.

The tenant submitted that Cherry had told him to pay the old landlord and so he did. He testified that when he asked the former landlord for a receipt the landlord responded by text saying it is your word against mine.

The landlord spoke of pest problem in the residential property that they are aware of and that they are dealing with it. However, the landlord stated that the tenants refused to allow the treatment in their unit.

The tenants also spoke about a problem with their dishwasher that has caused the female tenant to become ill and that despite repeated requests for repairs the landlord has done nothing about the dishwasher. The landlord testified that they tried to have their maintenance person address the issue but the tenants refused to allow him to do so.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 4, 2017 with an effective vacancy date of April 24, 2017 due to \$800.00 in unpaid rent.

The landlord submits the tenants failed to pay the full rent owed for the month of April 2017 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the rental unit door on April 7, 2017 at 12:40 p.m. and that this service was witnessed by a third party.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days. The landlord submits the tenants have also not paid rent for the months of May and June 2017. The tenants did not dispute that rent for the months of May and June 2017 had not been paid.

Analysis

Section 26 of the *Act* states 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, unless the tenant has the right under this *Act* to deduct all or a portion of the rent.

Despite the tenant's testimony regarding the dishwasher, I find they have provided no evidence that they had authority under the *Act* to withhold any rent payment. In addition, the tenants have failed to provide any evidence at all that they made a payment of rent to the old landlord, such as a receipt or bank statement at least showing activity on their bank accounts to confirm a rental payment may have been made.

I find the landlord has established, at least in part because there is no evidence to the contrary, that the tenants paid rent for the month of April 2017 to either the previous landlord or the current one. I also find, in the absence of any testimony or evidence to the contrary from the tenants, that the tenants have not paid any rent for the months of May and June 2017.

I have reviewed all of the landlord's evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on April 12, 2017 and the effective date of the notice was April 24, 2017. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find 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.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,500.00** comprised of \$2,400.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$400.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,100.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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, 2017

Residential Tenancy Branch