



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNCARE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlords: OPR MNR MND MNSD FF
For the tenants: CNR RP LRE

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “*Act*”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to keep all or part of the security deposit, for damages to the unit, site or property, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 4, 2017 (the “10 Day Notice”), and for an order directing the landlords to make general repairs to the unit, site or property, and for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement.

An agent for the landlord (the “agent”) attended the teleconference hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the ten minute waiting period had elapsed. The hearing continued with consideration of the landlord’s application only.

The hearing process was explained to the agent and the agent was given an opportunity to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. The evidence relevant to the issues and findings in this matter are described in this Decision.

The agent testified that the tenants were served with the Notice of Dispute Resolution Hearing (the “Notice of Hearing”) and Application for Dispute Resolution (the “Application”) on May 20, 2017. Two Canada Post registered mail tracking numbers were submitted in evidence which supports the testimony of the agent and that both packages; one addressed to each tenant, were signed for and accepted on May 29, 2017. The two registered mail tracking numbers are included on the cover page of this decision marked as “1” and “2” for ease of reference.

Given the above, I find that the tenants were served under the *Act* as of May 29, 2017 the date the registered mail packages were signed for and accepted. Regarding the service of documentary evidence, the agent testified that the documentary evidence was served by registered mail with one package addressed to each tenant on June 5, 2017. Two Canada Post registered mail tracking numbers were submitted in evidence which supports the testimony of the agent and that both packages; one addressed to each tenant, were signed for and accepted on June 6, 2017. The two registered mail tracking numbers are included on the cover page of this decision marked as “3” and “4” for ease of reference. I am satisfied that the tenants were sufficiently served with the landlord’s documentary evidence. As a result, the hearing continued without the tenants present. I find the landlord’s application is unopposed and undisputed as a result of the tenants failing to attend for the participatory hearing.

Preliminary and Procedural Matter

At the outset of the hearing, the agent confirmed that her monetary claim was actually less than the \$2,100.00 as claimed due to a mathematical error. As a result, the landlord’s actual monetary claim was for \$1,600.00 comprised of unpaid rent for May 2017 of \$800.00 and loss of June 2017 of \$800.00. I find that a reduction of the landlord’s monetary claim does not prejudice the tenants.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants’ security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on March 1, 2017 and was scheduled to revert to a month to month tenancy after February 28, 2018. The agent testified that the tenants have failed to pay May 2017 rent and continue to occupy the rental unit and as a result the landlord has suffered a loss of June 2017 rent.

The agent confirmed that the tenants paid a security deposit of \$400.00 at the start of the tenancy which the landlord continues to hold. The agent testified that monthly rent is \$800.00 per month and is due on the first day of each month. The tenancy agreement indicates that rent is due on the first day of each month.

Analysis

Based on the undisputed testimony of the agent and the unopposed documentary evidence before me, and on the balance of probabilities, I find the following.

Order of Possession - Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenants' application to dispute a notice to end tenancy as long as the 10 Day Notice complies with section 52 of the *Act*. I find that the 10 Day Notice complies with section 52 of the *Act*. As the tenants failed to attend the hearing, and the tenants' application to cancel the 10 Day Notice was dismissed, **I grant** the landlord an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenants.

Monetary Order – I accept the undisputed testimony of the agent that the tenants have failed to pay a \$800.00 rent for May 2017 and accept that the landlord has suffered a loss of June 2017 rent of \$800.00. As a result, I find the landlord has met the burden of proof and are entitled to **\$1,600.00** for unpaid rent and loss of rent as claimed.

As the landlord's application was successful, I grant the landlord the recovery of their **\$100.00** filing fee. I find the landlord's total monetary claim established is **\$1,700.00** comprised of \$1,600.00 in unpaid rent and loss of rent, plus the recovery of the \$100.00 filing fee. The landlord continues to hold the tenants' security deposit of \$400.00 which has not accrued interest since the start of the tenancy.

I authorize the landlord to retain the tenants' full security deposit of \$400.00 in partial satisfaction of the landlord's monetary claim. **I grant** the landlord a monetary order

pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$1,300.00**.

Conclusion

The tenants' application was dismissed in full, without leave to reapply.

The landlord's application is successful. The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlord has established a total monetary claim of \$1,700.00 and has been authorized to retain the tenants' full security deposit of \$400.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$1,300.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 21, 2017

Residential Tenancy Branch