Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNSD MNDC MNR FF

Introduction
This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlords' agent, SA, attended the hearing by way of conference call, the tenants did not. The landlords' agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

SA testified that the tenants were served with the landlords' application for dispute resolution hearing package on May 27, 2017 by way of registered mail. The landlords provided Canada Post tracking numbers in their evidence. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' application on June 1, 2017, five days after its registered mailing.

SA testified that the tenants were served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 26, 2017("10 Day Notice"), on April 27, 2017, by way of registered mail. The landlord provided a Canada Post tracking number during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on May 2, 2017, five days after its registered mailing.

Although the landlords applied for a monetary Order of $4,096.00 in their initial claim, since they applied another $1,300.00 in rent has become owing that was not included in their application. I have accepted the landlords' request to amend their original

application from $4,096.00 to $5,396.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

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

Are the landlords entitled to monetary compensation for unpaid rent and losses?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlords' agent, SA, testified regarding the following facts. This month-to-month tenancy began on February 1, 2016, with monthly rent in the amount of $1,300.00 payable on the first day of each month. The landlords hold a security deposit in the amount of $650.00 for this tenancy. The tenants continue to reside in the rental unit.

The landlords issued a 10 Day Notice to End Tenancy, dated April 26, 2017 as the tenants failed to pay rent due on April 1, 2017. The landlords testified that the tenants owe $1,300.00 in outstanding rent each for the months of April 2017 through to July 2017, plus $196.00 in outstanding utility bills.. The total outstanding rent and utilities are $5,296.00. The landlords are seeking an Order of Possession as well as monetary compensation for the unpaid rent and utilities.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenants did not make 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 May 12, 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 May 12, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

The landlords provided undisputed evidence that the tenants failed to pay the outstanding rent and utilities in the amount of $5,296.00. Therefore, I find that the landlords are entitled to $5,296.00 in outstanding rent and utilities for this tenancy.

The landlords continue to hold the tenants' security deposit of $650.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**.   Should the tenants 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 issue a $4,746.00 Monetary Order in favour of the landlords, which allows the landlords to recover unpaid rent and utilities, the filing fee for this application, and also allows the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim. The tenants must be served with this Order as soon as possible. Should the tenants 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.

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: July 14, 2017

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Residential Tenancy Branch