



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WOODBINE TOWNHOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, MNSD, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) provided undisputed affirmed evidence that both tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 20, 2017. The tenants confirmed receipt of this package. The tenants did not submit any documentary evidence. Neither party raised any issues with service. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

During the hearing both parties confirmed that the tenants have made multiple partial payments for rent and money owed for which receipts were issued by the landlord for "use and occupancy" only. Both parties confirmed that as of the date of this hearing \$25.00 is owed by the tenants for a late rent fee. The landlords still seek an order of possession and a monetary order for the \$25.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for damage and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit and/or pet damage deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2017 on a fixed term tenancy ending on February 28, 2018 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,100.00 payable on the 1st day of each month. Subject to a notice of rent increase dated January 23, 2017 the new rent is currently \$1,140.00 which started on May 1, 2017. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid.

The landlord seeks an order of possession and a monetary order for \$25.00 for a late rent fee.

The landlord provided affirmed testimony that the tenants were served with the 10 Day Notice for Unpaid Rent dated June 2, 2017 by placing it in the tenants' mailbox with a witness. The tenants confirmed receipt of the 10 Day Notice as claimed by the landlord. The 10 Day Notice states that the tenants failed to pay rent of \$1,165.00 that was due on June 1, 2017. The landlord clarified that this consists of \$1,140.00 in rent and a \$25.00 late rent fee. The 10 Day Notice sets out an effective end of tenancy date of June 13, 2017.

As stated above, both parties confirmed that the tenants have made multiple partial payments of rent for which receipts were issued for "use and occupancy only".

The tenants' claim that a payment plan was agreed to with the landlord in order to continue the tenancy. The landlord disputes this claim stating that no agreement was made for the payment plan and to continue the tenancy. The tenants claim that they have an email between the two parties agreeing to terms. The landlord reiterated that

no such agreement was made. The tenants were unable to provide any supporting evidence of this agreement.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the undisputed affirmed evidence of both parties and find that the landlord properly served the tenants with the 10 Day Notice dated June 2, 2017 by placing it in the tenants' mailbox on June 2, 2017. I find that the tenants are deemed served 3 days later on June 5, 2017 as per section 90 of the Act. As such, the effective end of tenancy date stated on the 10 Day Notice is corrected to June 15, 2017. Both parties have confirmed that multiple late rent payments were paid by the tenants for whom receipts were issued for "use and occupancy only". As such, I find that the landlord has established that the tenants failed to pay rent when it was due. The landlords have also provided sufficient evidence that the tenancy was not re-instated by giving notice to the tenants that they were still seeking an end to the tenancy by giving notice of "use and occupancy only." As the effective end of tenancy date has now passed, the landlord is granted an order of possession effective 2 days after being serve upon the tenants.

I accept the undisputed affirmed evidence of both parties that the current amount owed by the tenants is a \$25.00 amount attributed to a late rent fee. The tenants have acknowledged that this is an amount owing for paying rent late. The landlord has established a claim for \$25.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

As the landlord has applied to retain the security and pet damage deposits in satisfaction of the claim, I authorize the landlord to retain \$125.00 from the security deposit.

Conclusion

The landlord is granted an order of possession.

This order must be served upon the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: August 18, 2017

Residential Tenancy Branch