



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlords' Application for Dispute Resolution (the "Application") filed on June 19, 2017 for an Order of Possession. The Landlords also applied for a Monetary Order for: unpaid rent; to keep the Tenants' security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"); and, to recover the filing fee from the Tenants.

An agent for the Landlords appeared for the hearing and provided affirmed testimony and documentary evidence prior to the hearing. However, there was no appearance for the Tenants during the 13 minute hearing or any submission of evidence by them prior to this hearing. Therefore, I turned my mind to the service of documents by the Landlords.

The Landlords' agent testified that each Tenant was served with a copy of the Application and the Hearing Package to the rental unit address. This was done by registered mail on June 29, 2017. The Landlords provided a copy of the Canada Post tracking receipts as evidence to verify this method of service. The Landlords' agent testified that the Canada Post website shows that the documents were unclaimed by the Tenants.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail. Therefore, based on the undisputed evidence before me, I find the Tenants are deemed to have received the documents for this hearing on July 4, 2017 pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlords' agent as follows.

The Landlords' agent explained that the Tenants had abandoned the rental unit on July 8, 2017 and the Landlords had obtained possession of the rental unit. Therefore, I dismissed the Landlords' request for an Order of Possession as this issue is now moot.

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for the rental arrears in this tenancy?
- Are the Landlords entitled to keep the Tenants' security deposit in partial satisfaction of their monetary claim for unpaid rent?

Background and Evidence

The Landlords' agent testified that this tenancy started on November 1, 2016 for a fixed term set to expire on November 1, 2017. Rent of \$2,500.00 was payable on the first day of each month. The Tenants paid a security deposit of \$1,250.00 on October 5, 2016 which the Landlords still hold in trust.

The Landlords' agent testified that the Tenants failed to pay full rent for April 2017 rent leaving a balance of \$1,250.00. The Tenants then failed to pay full rent for May and June 2017 leaving outstanding rental arrears of \$6,250.00.

As a result, the Landlords served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on June 7, 2017. The Landlords' agent testified that the Notice was served to a male adult apparently living with the Tenants. The Notice was provided into evidence showing a vacancy date of June 17, 2017 due to \$6,250.00 in unpaid rent. The Landlords' agent confirmed during the hearing that she is only seeking the amount of unpaid rent on the Notice, even though the Tenants left in July 2017.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

I accept the undisputed evidence that the Tenants failed to pay the rental arrears of \$6,250.00 detailed on the Notice which was served to the Tenants pursuant to Section 88(e) of the Act. Therefore, the Tenants are liable for this amount.

As the Landlords have been successful in their monetary claim, pursuant to Section 72(1) of the Act, I grant the Landlords' request to recover the \$100.00 filing fee from the Tenants for the cost of this Application. Therefore, the total amount payable by the Tenants to the Landlords is **\$6,350.00** (\$6,250.00 + \$100.00).

As the Landlords already hold the Tenants' **\$1,250.00** security deposit, I grant the Landlords' request to keep this amount pursuant to Section 72(2) (b) of the Act in partial satisfaction of the monetary claim.

As a result, the Landlords are issued with a Monetary Order for the outstanding balance of **\$5,100.50** (\$6,350.00 - \$1,250.00). Copies of this Order are attached to the Landlords' copy of this Decision.

This order must be served on the Tenants and may then be filed and enforced in the Small Claims Division of the Provincial Court as an order of that court. The Tenants may also be held liable for any enforcement costs incurred by the Landlords.

Conclusion

The Tenants have breached the Act by not paying rent. Therefore, the Landlords may keep the Tenants' security deposit and are issued with a Monetary Order for the remaining balance of \$5,100.00. The Landlords' Application for an Order of Possession is dismissed without leave to re-apply as the Tenants have vacated the rental unit.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 02, 2017

Residential Tenancy Branch