



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dunes Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on September 22, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord's Agent, the "Agent", provided affirmed testimony at the hearing. The Tenants did not attend the hearing.

The Agent testified that he sent a copy of the Notice of Hearing along with supporting documentary evidence to each of the Tenants on August 25, 2017, by registered mail. I find both the Tenants received their packages on August 30, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Agent has requested to amend his application to include rent that has accrued since the original application date (for August and September 2017). I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Agent to amend their application to include rent that has accrued since the original application date.

The Agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Agent provided a copy of the tenancy agreement between the parties into evidence. It confirms the tenancy began on March 1, 2017. Rent in the amount of \$1,650.00 is due on the first day of each month. The Landlord holds a security deposit of \$825.00.

The Agent also provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was given directly to one of the tenants on July 16, 2017, and was witnessed by a third party, as per the Proof of Service document. The 10 Day Notice specified that \$1,439.00 was unpaid at the time. In arriving at this amount, the Agent testified that the tenants made a partial payment of \$665.00 on June 2, 2017, for June rent, leaving \$985.00 outstanding. The Agent further testified that the tenants only paid \$1,200.00 on July 5, 2017, for July rent, adding another \$450.00 to the accrued balance. Further, the Agent testified that the tenants only paid \$538.00 for August rent, adding another \$1,112.00 to the balance. And finally, the Agent testified that the tenants paid nothing for the month of September, despite remaining in the rental unit, which adds another \$1,650.00 to the outstanding balance.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under

this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants failed to pay rent in full for June and July of 2017, leaving a balance of unpaid rent at the time the 10 Day Notice was issued on July 16, 2017. The landlord issued the 10 Day Notice by giving a copy directly to one of the tenants on July 16, 2017, and I find the tenants received the 10 Day Notice on this day.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice (July 26, 2017). The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Agent's request for a Monetary Order for unpaid rent. I note that in his Direct Request Worksheet, the Agent indicated that there was \$985.00 in unpaid rent for June, and \$450.00 for July of 2017. He also indicated that this amounted to \$1,439.00. However, these two amounts only add up to \$1,435.00. I have amended this amount accordingly. Based on the documentary evidence and affirmed testimony I find as follows:

Year	Month	Rent Due	Rent Paid	Rent Outstanding
2017	June	\$1,650.00	\$665.00	\$985.00
	July	\$1,650.00	\$1,200.00	\$450.00
	August	\$1,650.00	\$538.00	\$1,112.00
	September	\$1,650.00	\$0.00	\$1,650.00
Total Accrued Balance				\$4,197.00

I find there is sufficient evidence before me to demonstrate that the tenants owe and have failed to pay \$4,197.00 in past due rent.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenant fails 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.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$4,197.00** comprised of rent owed. 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: September 22, 2017

Residential Tenancy Branch