



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPC, FFL

Introduction

This conference call hearing was scheduled in response to an Application for Dispute Resolution filed by the Landlord for an Order of Possession for Cause, a Monetary Order for unpaid rent and recovery of the filing fee.

The Agent for the Landlord ("Landlord") provided affirmed testimony confirming service of the Notice of Hearing as well as their evidence package to the Tenants on February 14, 2018 by hand delivery. I accept that the Notice of Hearing was received by the Tenants on the same day it was delivered. The Tenants did not call into the conference call, despite the line remaining open for the duration of the 17 minute hearing.

Issue(s) to be Decided

Should an Order of Possession be issued?

Is the Landlord entitled to a Monetary Order for unpaid rent and to retain the security deposit in partial satisfaction of this claim?

Is the Landlord entitled to the recovery of the filing fee?

Background and Evidence

The Landlord provided affirmed and undisputed testimony that the tenancy began on April 1, 2015 and that the current rent, due on the first of the month, is \$1,581.04. The Landlord received a security deposit in the amount of \$712.50 on March 30, 2015.

The Landlord testified there has been repeated late payment of rent, on an ongoing basis since 2016. More recently, rent has been paid late in November 2017, December

2017, January 2018, February 2018 and March 2018. As of the date of this hearing, April 17, 2018, rent for April 2018 has not been paid.

A number of 10 Day Notice to End Tenancy ("10 Day Notice") documents have been given to the Tenants when rent was not paid when due on the first of the month. The Landlord testified that the Tenants did not pay the rent owing or apply to dispute the 10 Day Notices within 5 days as required by Section 46(4) of the *Residential Tenancy Act* (the "Act").

The Landlord testified that on December 17, 2017, a One Month Notice to End Tenancy ("One Month Notice") was hand delivered to the Tenants with an effective end of tenancy date of January 31, 2018 and noting cause as repeat late payment of rent. The Landlord confirms that they have not received a Notice of Dispute Resolution proceeding from the Tenants, indicating that the Tenants applied to dispute the Notice to End Tenancy.

Analysis

Based on the evidence presented, I accept that the One Month Notice meets the requirements of section 52 of the *Act*. As the Tenants did not apply to dispute the One Month Notice within ten (10) days in accordance with section 47(4) of the *Act*, they are conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, January 31, 2018, as per section 47(5). As such, I find that the tenancy has ended and an Order of Possession will be issued to the Landlord for service upon the Tenants.

I accept the undisputed testimony of the Landlord that April 2018 rent remains unpaid as of the date of this hearing, April 17, 2018. The rent owing is \$1,581.04 as well as a \$25.00 late fee as stated in the Tenancy Agreement, for a total of \$1606.04. As the Landlord testified that a recent rent increase has changed the amount of rent owing for April 2018, in accordance with section 64(3), I am amending the Application to an amount of \$1,606.04.

As the Landlord was successful in their application, they are entitled to the recovery of the \$100.00 filing fee as per section 72 of the *Act*. I decline to order the payment of any additional monthly fees, such as locker or parking fees, as they are not agreed upon in the Tenancy Agreement.

The Landlord is holding a security deposit in the amount of \$712.50, and in accordance with section 72 of the *Act*, this amount can be retained in partial satisfaction of the money owed.

Monetary Order Calculations

April 2018 rent	\$1,581.04
April 2018 late fee	\$25.00
Recovery of filing fee	\$100.00
Less Security deposit	(\$712.50)
Total owing to Landlord	\$993.54

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I **Order** that the Landlord retain the security deposit of \$712.50 in partial satisfaction of the total amount owed.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a **Monetary Order** in the amount of \$993.54 for the balance of rent and late fees owed for April 2018 and for the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms and 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: April 17, 2018

Residential Tenancy Branch