



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRLS, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of the tenants’ security deposit and/or pet damage deposit, and to recover the cost of the filing fee.

An agent for the landlord SL (“agent”) and tenant AT (“tenant”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

The tenant confirmed that they were served with the landlords’ documentary evidence and that they had the opportunity to review that evidence prior to the hearing. The tenant also confirmed that the tenants did not serve any documentary evidence in response to the landlords’ application.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*? If so, in what amount?
- Is the landlord entitled to recover the cost of the filing fee under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A month to month tenancy began on September 28, 2015. Monthly rent in the amount of \$885.00 was originally due on the first day of each month and was increased to \$910.00 up until August 2018 and increased as of September 1, 2018 to \$945.00 per month. A security deposit of \$442.50 and a pet damage deposit of \$442.50 were paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord submitted a copy of several 10 Day Notices to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"). The 10 Day Notice relevant to the matter before me is dated July 5, 2018. The agent testified that the 10 Day Notice was posted to the tenants' door on July 6, 2018. The tenant could not recall which day he received the 10 Day Notice. The amount listed as owing on the 10 Day Notice is \$3,230.00 due July 1, 2018. The agent testified that the tenants did not pay the amount owing until August 23, 2018 which the tenant agreed to during the hearing. The tenant also confirmed that the tenants did not dispute the 10 Day Notice. The landlord stated that the tenants paid the final portion of \$150.00 on January 18, 2014, which was ten days after being served with the 10 Day Notice.

The parties agreed that money for use and occupancy was paid for September 2018 and that all outstanding amounts have been paid as of the date of the hearing. The agent requested an order of possession based on the 10 Day Notice and is requesting the recovery of the cost of the filing fee.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession - I find that the tenants failed to pay the rent or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice, and that the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date on the 10 Day Notice. Section 90 of the *Act* states that documents served by posting to the door are deemed served three days after they are posted. Therefore, I find the 10 Day Notice posted to the tenants' door on July 6, 2018 was deemed served three days later on July 9, 2018. Therefore, pursuant to section 53 of the *Act* I find the 10 Day Notice automatically corrects to the correct effective vacancy date of July 19, 2018 which has passed.

Accordingly, I grant the landlord an order of possession effective **September 30, 2018 at 1:00 p.m.** as money has been received for use and occupancy of the rental unit for September 2018.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee. I authorize the landlord to retain **\$100.00** from the tenants' security deposit in full satisfaction of the landlord's recovery of the filing fee. As a result, I find the tenants' security deposit balance has been reduced from \$442.50 to \$342.50. The pet damage deposit remains at \$442.50.

Due to the parties agreeing that all unpaid rent and parking fee arrears have been paid as of the date of the hearing, I do not grant a monetary order to the landlord.

I find the tenancy ended on July 19, 2018.

Conclusion

The landlord's application has merit.

The landlord has been granted an order of possession effective September 30, 2018 at 1:00 p.m., which must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been authorized to retain \$100.00 from the tenants' security deposit in full satisfaction of the recovery of the filing fee as the landlord's application had merit. The tenants' security deposit has been reduced from \$442.50 to \$342.50 as a result.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 13, 2018

Residential Tenancy Branch