



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP, METCAP LIVING MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution, made on September 19, 2018 (the "Application"). The Landlords applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Landlords were represented at the hearing by S.P., an agent. The Tenants attended the hearing on their own behalves. All in attendance provided affirmed testimony.

On behalf of the Landlord, S.P. testified the Application package and documentary evidence were served of the Tenants by registered mail. The Tenants acknowledged receipt. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find that these documents were sufficiently served for the purposes of the *Act*. The Tenants did not submit or serve documentary evidence in response to the Application.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent?
2. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the fixed-term tenancy agreement between the parties was submitted into evidence. It confirms the tenancy began on September 1, 2017, and was expected to continue to August 31, 2018. The tenancy agreement specifies that the tenancy will continue on a month-to-month basis at the end of the fixed term. During the tenancy, rent in the amount of \$1,595.00 per month was due on or before the first calendar day of each month. The Tenants paid a security deposit of \$797.50, which the Landlords hold.

On behalf of the Landlord, S.P. testified the Tenants gave notice of their intention to vacate on August 7, 2018. The Tenants moved out on August 31, 2018. S.P. confirmed the Landlords took steps to re-rent the unit and was able to do so effective October 15, 2018. However, the Landlords are claiming only \$1,595.00, which was due on September 1, 2018.

In reply, the Tenants acknowledged notice was given late. However, they cited a number of factors which have led them to believe rent should not have been due for the month of September 2018. First, they advised that a family illness required them to give notice and vacate the rental unit. The Tenants asserted that they did not give notice late with any "malicious intent".

Second, the Tenants testified to their belief that the notice provided the Landlords with sufficient opportunity to re-rent the unit effective September 1, 2018. They referred to anecdotal information concerning the current housing market.

Third, the Tenants referred to a conversation with the building manager, who they claim advised them that the security deposit would be returned and that rent would not be due on September 1, 2018. They learned the Landlords were pursuing these amounts during the move-out condition inspection.

Fourth, the Tenants testified that the building manager contacted them accidentally on October 17, 2018. During that conversation, the building manager advised that the unit was rented “a long time ago”. In response, S.P. testified that it was rented before but was not occupied until October 15, 2018.

Finally, the Tenants testified they have received persistent calls from debt collection agencies, and requested that any amount due to the Landlords be paid through the courts.

Analysis

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

Section 44(3) of the *Act* confirms that when a tenancy agreement does not require the tenant to vacate the rental unit at the end of a fixed term, and the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

In this case, the fixed-term tenancy ended on August 31, 2018. The tenancy agreement submitted into evidence did not require the Tenants to vacate the rental unit on that date and the parties did not enter into a new tenancy agreement. Rather, the agreement confirmed that the tenancy would continue on a month-to-month basis. I find the tenancy agreement continued on a month-to-month basis after August 31, 2018.

In addition, section 45 of the *Act* sets out the requirements for tenants wishing to end a tenancy agreement. Whether a month-to-month tenancy or a fixed-term tenancy, the *Act* requires that a tenant’s notice must be effective on a date that is not earlier than one month after the date the landlord receives the notice. This provision also requires that notice be effective the day before the day in the month that rent is payable under the tenancy agreement. Therefore, pursuant to section 45 of the *Act*, the Tenants’ notice was not effective to end the tenancy on August 31, 2018. Rather, the notice was effective on September 30, 2018. Accordingly, rent was payable when due on September 1, 2018.

Section 7 of the *Act* requires a party who claims compensation for damage or loss to do whatever is reasonable to minimize the damage or loss. In this case, I am satisfied the Landlords took reasonable steps to re-rent the unit, and did re-rent the unit effective October 15, 2018.

In light of the above, I find the Landlords are entitled to a monetary award of \$1,595.00 for unpaid rent for the month of September 2018. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the security deposit held by the Landlords be applied in partial satisfaction of the monetary award granted to the Landlords.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$897.50, which has been calculated as follows:

Claim	Amount
Unpaid rent (September 2018):	\$1,595.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$797.50)
TOTAL:	\$897.50

Conclusion

The Landlords are granted a monetary order in the amount of \$897.50. The order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 21, 2019

Residential Tenancy Branch