



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CENTURY 21 QUEENSWOOD REALTY
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on March 15, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent;
- an monetary order for unpaid rent;
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30am on May 6, 2019 as a teleconference hearing. C.R. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that C.R. and I were the only persons who had called into this teleconference.

C.R. testified the Application and documentary evidence package was served to the Tenants by registered mail on March 18, 2019. C.R. provided the tracking information in support. Based on the oral and written submissions of C.R., and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on March 23, 2019, the fifth day after the registered mailing.

C.R. was given an 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

C.R. testified that the tenancy began on August 1, 2018. C.R. stated that currently, rent in the amount of \$1,450.00 is due on the first day of each month and that a security deposit in the amount of \$725.00 was paid to the Landlord. C.R. confirmed that the Tenants continue to occupy the rental unit. Neither party provided a copy of the tenancy agreement in their documentary evidence.

C.R. testified that the Tenants had an outstanding balance of rent owing from 2018 in the amount of \$2,001. C.R. testified that the Tenants were also unable to pay rent for the month of March 2019, therefore the Landlord served the Tenants with a 10 Day Notice for Unpaid Rent dated March 1, 2019 (the "10 Day Notice") in the amount of \$3,541.00 by posting it to the Tenants door on March 1, 2019. The 10 Day Notice has an effective vacancy date of March 11, 2019. The Landlord submitted a copy of the 10 Day Notice in support.

C.R. testified that he received a payment of \$1,200.00 from the Tenants on March 5, 2019. C.R. testified that the Tenants made another payment in the amount of \$800.00 on March 26, 2019, bringing the amount of unpaid rent owed to the Landlord down to \$1,451.00. C.R. testified that the Tenants have not paid rent when due for April 2019, therefore the Landlord is seeking monetary compensation in the amount of \$2,901.00.

C.R. stated that the Landlord is seeking to retain the Tenants security deposit in the amount of \$725.00 held in partial satisfaction of the Landlord's claim. Furthermore, the Landlord is seeking an Order of Possession based on the 10 Day Notice, as well as the return of the filing fee.

As noted above, the Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

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

Section 26 of the Act explains that the Tenants must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenants have a right under this Act to deduct all or a portion of the rent.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlord's uncontested testimony that the Landlord served the 10 Day Notice dated March 1, 2019, with an effective vacancy date of March 11, 2019, by posting it on the Tenants' door on March 1, 2019. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received 3 days later. I find the Tenants are deemed to have received the 10 Day Notice on March 4, 2019.

In this case, the Landlord served the 10 Day Notice on March 1, 2019, which is the same day that rent is due. While Section 46 of the Act states that a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, I am satisfied that the Tenant had an outstanding balance of unpaid rent which pre dated March 1, 2019. As such, I find that the 10 Day Notice is valid.

Section 46(4) says that within 5 days after receiving a notice under this section, the Tenants may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the

Tenants had until March 9, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant paid \$2,000.00 of the outstanding rent owed. However, as the Tenants did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenants disputed the 10 Day Notice, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, March 14, 2019, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$2,901.00. Having been successful, I also find the Landlord is 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 Landlord retain the portion of the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$2,276.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$2,901.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$725.00)
TOTAL:	\$2,276.00

Conclusion

The Tenants have breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after

service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,276.00. The monetary order should be served to the Tenants as soon as possible and 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: May 07, 2019

Residential Tenancy Branch