



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CL 17719 GP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**"), which was adjourned from a direct request to a participatory hearing, for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent, pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$795.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenants were personally served the notice of reconvened hearing and a copy of the interim decision on April 6, 2019. I find that the tenants were served in accordance with section 89 of the Act.

The landlord's agent testified that the tenants were each served an evidence package via registered mail on March 28, 2019. The landlord's agent provided Canada Post tracking numbers confirming these mailings which are reproduced on the cover of this decision. I find that the tenants are deemed served with these packages on April 4,

2019, five days after the landlord's agent mailed them, in accordance with sections 88 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested;
- an Order of Possession for non-payment of rent;
- a monetary order for unpaid rent in the amount of \$795.00; and
- recover the filing fee for this application from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of its agent's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent testified that the tenants entered into a written tenancy agreement (a copy of which was submitted into evidence) starting May 1, 2014 with an entity named "CEL". Monthly rent was \$750.00 and was payable on the first of each month. The tenant paid CEL a security deposit of \$350.00.

The landlord's agent testified that:

- 1) the landlord purchased the rental property from CEL in May 2018;
- 2) the landlord holds the tenants' security deposit; and
- 3) the current monthly rent is \$795.00.

The landlord submitted copies of deposits slips dated February 4, 2019 which shows that the tenants, between them, paid \$795.00 in monthly rent.

The landlord submitted a copy of a 10 Day Notice to End Tenancy (the "**Notice**") into evidence. It was issued on March 2, 2019, and has an effective date of March 12, 2019. It states that the tenants are in rental arrears in the amount of \$795.00, as of March 1, 2019. The landlord's agent testified that the Notice was served on the tenants by posting it on the door of the rental unit on March 2, 2019.

The landlord's agent testified that the tenants repaid this amount on March 28, 2019, but that the landlord accepted this payment "for use and occupancy" only. The landlord's agent testified that the tenants paid April 2019 and May 2019 rent on time, but that it was accepted by the landlord "for use and occupancy" only.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting it on the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on March 5, 2019.

Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26 (1)A tenant 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 tenant has a right under this Act to deduct all or a portion of the rent.

As such, I find that the tenants were obligated to pay March rent in the amount of \$795.00 by March 1, 2019. I find that the tenants have failed to do so, as they paid March rent on March 31, 2019.

I accept the landlord's agent's undisputed testimony and find that the tenant did not pay the rent owed in full within the five days granted under section 46 (4) of the Act and did not apply to dispute the Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, March 15, 2019.

Therefore, I find that the landlord is entitled to an order of possession based on the Notice served on the tenants for unpaid rent owed by March 1, 2019, as claimed on the landlord's Application for Dispute Resolution by Direct Request.

As the tenants have paid the rental arrears of \$795.00, I decline to issue a monetary order for that amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. Per section 72(2), I order that the landlord may deduct this amount from the security deposit, and return the balance of the security deposit (\$250.00) to the tenants in accordance with the Act.

Conclusion

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord by May 31, 2019 at 1:00 pm. This order may be filed and enforced in the Supreme Court of British Columbia.

Pursuant to section 72 of the Act, I order that the tenants reimburse the landlord its filing fee (\$100.00) for this application. The landlord may deduct this amount from the security deposit, and return the balance to the tenants in accordance with the Act.

I order that the landlord serve copies of this decision and the attached order of possession on the tenants as soon as possible.

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 9, 2019

Residential Tenancy Branch