



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- 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; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlords' agent handed her the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on May 8, 2012. The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package sent by the landlords' agent by registered mail on May 16, 2012. I am satisfied that the landlords served these documents in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover their filing fee for this application?

Background and Evidence

This periodic tenancy commenced on September 1, 2002. Monthly rent is currently set at \$750.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$325.00 security deposit (plus applicable interest) paid by the tenant on or about August 24, 2012.

The landlords issued the 10 Day Notice for unpaid rent of \$5,250.00 for the months of November and December 2011, and January, February, March, April and May 2012. The landlords' agent testified that the tenant has not paid anything towards this outstanding rent and has not paid any rent for June 2012.

The landlord applied for a monetary award of \$5,250.00 for unpaid rent and an end to this tenancy for unpaid rent. Since there has been no payment of rent for June 2012, the agent requested that \$750.00 be added to the landlords' application to reflect the non-payment of rent for June 2012. Other than the landlords' application for dispute resolution, the only written evidence the landlords provided in support of their application was a copy of the 10 Day Notice.

The tenant testified that the Ministry of Social Development (the Ministry) paid her November and December 2011 rent on her behalf in full. However, during the course of the hearing, she varied this testimony to state that she was "short" \$200.00 of her rent for December 2011 and approached the Ministry to pay the landlords this remaining outstanding rent. She said that there would be receipts for the Ministry's payments of her rent for November and December 2011, although she had not requested a copy of receipts from the Ministry nor did she submit any written evidence.

The tenant's agent testified that he paid the female landlord who was in attendance at this hearing \$300.00 in cash to be applied against the tenant's outstanding rent. He said that this payment was made in late April 2012. Although he testified that the female landlord accepted this payment, she did not issue him a receipt for this cash payment. The tenant's agent maintained that the landlords had not issued any receipts during this tenancy, despite requests from the tenant for receipts for her payments.

The landlord's agent was unaware of any cash payment by the tenant's agent. The female landlord testified that the tenant's agent did pay him \$20.00 sometime in late April so that the tenant and her agent could use the landlords' washer and dryer. She said that she issued no receipt for this payment because he did not ask for one. She said that she could not remember the tenant's agent making any other cash payment to her. She testified that she had no recollection of the tenant or her agent making any other payments to her since November 2011.

The tenant confirmed that the landlord has not accepted any funds from her (other than the \$300.00 paid by her agent in April 2012) during 2012. She said that she has tried to pay rent to the landlords, but the landlords were only interested in receiving the full amount of the outstanding rent and not the tenant's attempted partial payments. She testified that she owes rent from January 2012 until June 2012, less \$300.00.

The tenant and her agent also maintained that the landlord has failed to provide services to her during this tenancy and asked for a reduction in rent due to this curtailment in services. The tenant confirmed that she had not made any application for

dispute resolution with respect to this tenancy to seek a rent reduction. She testified that an official from the Residential Tenancy Branch (RTB) told her that she could not apply for dispute resolution to cancel the landlord's 10 Day Notice after the five-day period for doing so had ended. Although she could not apply to cancel the 10 Day Notice after May 13, 2012, she could have applied for an extension of time had there been extenuating circumstances. I said that after that date, the landlords could accept or reject payments from her towards the amount owed during this tenancy.

The tenant said that she has alternate accommodations arranged for July 1, 2012. She asked for additional time to vacate the rental unit so that her children could finish their school year in their present location.

Analysis – Landlords' Application to End Tenancy and Obtain an Order of Possession

The tenant admitted that she failed to pay rent she owed the landlords in full for the period from January 2012 until May 2012, within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by May 18, 2012. As that has not occurred, I find that the landlord is entitled to a 7 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 7 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Landlords' Application for a Monetary Order

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

There was very little written evidence provided by either party with respect to the monetary issues in dispute. I also found the oral testimony of the parties vague and lacking in sufficient detail to determine what has been paid by the tenant in the most recent eight months of this tenancy. While the tenant's sworn testimony and that of her agent was inconsistent during the course of the hearing, I also found the testimony of

the female landlord questionable. The female landlord could not recall having received payments from the tenant or the tenant's agent, with the exception of the \$20.00 payment she admitted receiving.

When cash payments are made, it is extremely important that a landlord issue rent receipts. The landlord's agent explained that rent receipts were not necessary for much of this tenancy because the tenant's rental payments were made by the Ministry. While the landlords, as the applicants for the monetary award for unpaid rent, bear the primary burden of proof, the tenant also knew that the landlords had applied for a significant monetary award. If rent receipts were available from the Ministry, I would expect that the tenant would have taken measures to try to obtain them prior to this hearing.

The scarcity of documented evidence from either party leads me to a consideration of whether the landlords have met the burden of proof regarding their claim for a monetary award. In this case, I find that the landlords' failure to provide a rent ledger, receipts or sufficient written evidence to support the claim for a monetary award requested leads me to consider those elements of the oral testimony that was undisputed at the hearing.

I find that there is undisputed oral testimony that the tenant has not paid rent from January 2012 until June 2012. I allow the landlord a monetary award of \$750.00 per month for the five months from January 2012 until May 2012, a total of \$3,750.00. As this tenancy will not end until 7 days after the issuance of this decision, I also find that the landlords are likely to be unable to re-rent the premises to another tenant for any portion of June 2012. For that reason, I allow the landlords a further \$750.00 in unpaid rent for June 2012.

Neither party provided convincing evidence with respect to the landlords' claim for unpaid rent owing from November and December 2011. Under these circumstances, I find that the landlords have not met their burden of proof with respect to their claim for unpaid rent for November and December 2011. I dismiss the landlords' claim for unpaid rent for November and December 2011 without leave to reapply.

I have also considered the evidence from the female landlord and the tenant's agent with respect to the amount of the April 2012 payment made by the tenant's agent towards the amount owed by the tenant to the landlords. I find neither account of the details of this payment particularly convincing. However, on a balance of probabilities, I find it more likely than not that the tenant's agent would not demand the issuance of a receipt for a \$20.00 payment to the female landlord as opposed to the \$300.00 payment the tenant's agent claimed to have made to the landlord. For this reason, I reduce the

amount of the landlords' entitlement to a monetary award by \$20.00, the amount of this payment identified by the female landlord in her sworn testimony.

I allow the landlords to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision.

As the landlords have been successful in their application, I allow them to recover their filing fee for their application from the tenant.

Conclusion

I provide the landlords with a formal copy of an Order of Possession to take effect within 7 days of the landlords' service of this notice to the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlords' favour in the following terms which allows them to recover unpaid rent owed during this tenancy and their filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid February 2012 Rent	750.00
Unpaid March 2012 Rent	750.00
Unpaid April 2012 Rent	750.00
Unpaid May 2012 Rent	750.00
Unpaid June 2012 Rent	750.00
Less Tenant's Agent's Payment	-20.00
Less Security Deposit plus Interest (\$325.00 + \$11.51 = \$336.51)	-336.51
Recovery of Filing Fee for this application	100.00
Total Monetary Order	\$4,243.49

The landlords are provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I dismiss the landlords' application for a monetary award for unpaid rent for November and December 2011 without leave to reapply.

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: June 06, 2012

Residential Tenancy Branch