



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF, CNR

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlords 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. At the commencement of this hearing, Tenant ED (the tenant) testified that she called the Residential Tenancy Branch (the RTB) to advise of her desire to have the hearing of the tenants' application cancelled and to withdraw the tenants' application. The tenants' application is hereby withdrawn.

The tenant confirmed that the tenants received a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on October 30, 2013, and a 10 Day Notice on November 2, 2013. She confirmed that both of these notices were handed to an adult residing at her rental unit by one of the landlords (or their representatives). The tenant also confirmed that both tenants received copies of the landlords' dispute resolution hearing package sent by the landlords by registered mail on November 23, 2013. I am satisfied that the landlords served the above documents and their written evidence package to the tenants in accordance with the *Act*.

At the commencement of the hearing, the tenant testified that the tenants were no longer living at the rental unit, and were hoping to remove the remainder of their possessions from the rental unit later on the day of the hearing. As she may encounter some difficulty in obtaining a truck to remove some of her remaining items, the male landlord (the landlord) agreed to obtain an Order of Possession that would take effect at 1:00 p.m. on December 19, 2013, the day after this hearing.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent or for cause? Are the landlords entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This periodic tenancy commenced on September 1, 2013 on the basis of an oral agreement. Monthly rent is set at \$2,000.00, payable in advance on the first of each month, plus utilities. The landlords continue to hold the tenants' security deposit payments of \$800.00 on August 28, 2013 and \$200.00 on September 1, 2013.

The parties agreed that the tenants have paid only \$1,000.00 of their rent for November 2013, and none of the rent for December 2013. The tenant confirmed that the tenants have not paid anything further to the landlords since receiving the 10 Day Notice. The landlord requested an Order of Possession to take effect the following day and a monetary award of \$3,050.00 for unpaid rent, plus the recovery of their filing fee.

The tenant testified that the value of their tenancy had been diminished by the landlords' failure to provide electricity for a four- day period of this tenancy. The landlord testified that he believes that considerable damage has arisen during this tenancy for which the landlords need to be compensated. As neither of the parties' applications mentioned anything about these issues and these issues were not properly before me, I advised the parties that I was in no position to consider these matters. Both parties remain at liberty to submit applications for dispute resolution if their objective is to obtain a monetary award for these items.

Analysis

The tenants failed to pay the \$1,000.00 in unpaid rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. Although the tenants applied pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice to set aside that Notice, they have withdrawn that application and have not paid anything further to the landlords. In accordance with section 46(5) of the *Act*, the tenants' failure

to pay their rent in full within five days leads to my finding that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on December 19, 2013, by which time the tenants will have to remove the remainder of their belongings from the rental unit. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit by that time and date, the landlords may enforce this Order in the Supreme Court of British Columbia.

Since this tenancy has ended on the basis of the 10 Day Notice, there is no need to consider the landlords' 1 Month Notice.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for December 2013, the tenants would have needed to provide their notice to end this tenancy before November 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing.

There is undisputed evidence that the tenants did not pay \$1,000.00 of their rent for November 2013 and have paid none of their rent for December 2013, the last month of their tenancy. Due to the timing of this hearing, I find it unlikely that the landlords will be able to re-rent the premises for any portion of December 2013. As such, I find that the tenants are responsible for unpaid rent of \$1,000.00 for November 2013 and \$2,000.00 for December 2013, and issue a monetary award in the landlord's favour in the amount of \$3,000.00 for those months.

Although the landlords' application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application from the tenants.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on December 19, 2013. Should the tenant(s) 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 under the following terms, which allows the landlords to recover unpaid rent and their filing fee from tenants and to retain the tenants' security deposit:

Item	Amount
Unpaid Portion of November 2013 Rent	\$1,000.00
Unpaid December 2013 Rent	2,000.00
Less Security Deposit	-1,000.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2,050.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

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: December 18, 2013

Residential Tenancy Branch

