



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's 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 tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

Both the landlord and tenant RG attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by her advocate.

The landlord testified that on 4 October 2014 she served the tenants personally with the 10 Day Notice. The landlord provided me with a proof of service document where she confirms this service. The tenant RG admitted service. On the basis of this evidence, I am satisfied that the tenants were served with the 10 Day Notice pursuant to section 88 of the Act.

The landlord testified that she served the tenants with the dispute resolution package personally on 3 November 2014. I was provided with a note in which the tenants acknowledged this personal service. The tenant RG admitted service of the dispute resolution package. On the basis of this evidence, I am satisfied that the tenants were served with notice of this application pursuant to section 89 of the Act.

The tenant RG testified that he served the evidence to the landlord personally on the morning of this hearing. The landlord agreed that she did not receive the tenants' evidence until the morning of the hearing, but consented to the admission of the

tenants' evidence. On the basis of the landlord's consent, I will consider the tenants' evidence despite its late service.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, including audio recording, miscellaneous letters and notes, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

There is no written tenancy agreement for this tenancy. I was provided with shelter information for the tenancy that summarizes some of the pertinent details. The tenancy was entered into in April 2014. Monthly rent of \$700.00 was due on the first. A security deposit of \$350.00 was collected at the beginning of the tenancy.

The tenancy was for a trailer on the landlord's property. The tenancy agreement included a rental abatement based on work provided by the tenants to the landlord. This rent abatement was for \$350.00 per month.

The landlord testified that rent payment was an ongoing problem with these tenants. The landlord testified that the tenants have routinely paid their rent "at the eleventh hour".

The landlord testified that she issued the 10 Day Notice on 4 October 2014. The 10 Day Notice was issued for \$700.00 in unpaid rent and \$90.70 of unpaid utilities. The landlord provided me with a Proof of Service document which sets out the same details.

The landlord provided a handwritten note on hotel note paper, prepared in October 2014, which was signed by the tenant RG:

On Aug 23, 2014 I will pay \$740.70 to catch up on rent and hydro arrears or else I will vacate the premises by Oct 31, 2014.

The landlord and tenant both agree that “Aug.” on the note should actually have read “Oct.”

At the time the agreement was prepared, the landlord prepared an accounting of rent owing. This accounting included deductions for \$250.00 for the tenants’ labour in attending to the landlord’s farm on five different days and a further \$150.00 for the tenants’ completion of chores from 10 October 2014 to 24 October 2014.

On 24 October 2014, the landlord provided a handwritten letter to the tenants that stated:

Since you have obviously not fulfilled your agreement, I trust you to honour your word and vacate the trailer by October 31, 2014.

The tenant RG testified that he was not able to pay the landlord on 23 October 2014 because the mail did not arrive until 24 October 2014. On 24 October 2014, the tenant RG attempted to provide the landlord with the rent. The landlord refused to accept the rent. The tenants provided me with an audio recording that confirms this refusal.

The landlord claims for the following:

Item	Amount
Unpaid October Rent	\$300.00
Unpaid November Rent	700.00
August Hydro	90.70
September Hydro	84.10
Filing Fee	50.00
Total Monetary Order Requested	\$1,224.80

The tenants dispute that any hydro bills remain outstanding. The tenants dispute the landlord’s testimony that the trailer was separately metered. I was not provided with any documentation that shows the amount of hydro outstanding. I was not provided with any agreement or calculation of how hydro is determined.

Analysis

In accordance with section 44 of the Act, a tenancy ends where:

- the landlord or tenant gives notice;
- the landlord and tenant agree; or
- the tenant abandons the rental unit.

The tenant submits that the landlord is unable to rely on the agreement to end tenancy because of the error in date. Section 75 of the Act specifically establishes that I am not bound by the rules of evidence. I interpret this to include the parole evidence rule, which is a common law rule that prevents a party to a written contract from presenting extrinsic evidence that discloses an ambiguity and clarifies it or adds to the written terms of the contract that appears to be whole. Accordingly, I find that there was a bargain struck by the parties and evidenced in writing to accept the tenants' notice to end the tenancy on 31 October 2014 if the tenants failed to pay rent on 23 October 2014. I find that the note is sufficient written agreement to end the tenancy in accordance with section 45 of the Act.

I find that the landlord's acceptance of the tenants' notice to end the tenancy voided the 10 Day Notice issued 4 October 2014. However, it is agreed by both parties that the tenant failed to meet the 23 October 2014 deadline. On this basis, I find that the tenancy ended 30 November 2014, which is the earliest corrected effective date of the tenants' notice. On this basis, the landlord is entitled to an order of possession for 30 November 2014.

I accept that the tenants failed to pay rent for October of \$300.00. I find that the tenants failed to pay November's rent of \$700.00. Accordingly, the landlord is entitled to a monetary award for unpaid rent.

The hydro amount is disputed by the tenants. The landlord has not provided me with sufficient evidence that shows the hydro amounts outstanding. I find that the landlord has failed to prove her claim in respect of the outstanding hydro amounts and therefore dismiss this portion of her claim without leave to reapply.

The landlord applied to keep the tenants' security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord has been successful in her claim she is entitled to recover the filing fee from the tenants.

Conclusion

The landlord is provided with a formal copy of an order of possession effective at 1 o'clock pm on 30 November 2014. 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 landlord's favour in the amount of \$700.00 under the following terms:

Item	Amount
Unpaid October Rent	\$300.00
Unpaid November Rent	700.00
Less Security Deposit	-350.00
Filing Fee	50.00
Total Monetary Order Requested	\$700.00

The landlord is 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 subsection 9.1(1) of the Act.

Dated: November 24, 2014

Residential Tenancy Branch

