



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRISTOL ESTATES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, 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 and late fees pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although the 1:30 p.m. hearing continued until 1:43 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions. On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Preliminary Matter: Service of Notices

The landlord provided documentary evidence and testified that she witnessed the service of the 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice"). The landlord's agent served the 10 Day Notice to the tenant by posting it on the tenants' door on November 2, 2014. Based on the documentary evidence provided by the landlord and pursuant to section 88 and 90 of the *Act*, I find the tenants have been served with the 10 Day Notice on November 5, 2014, three days after its posting. The corrected effective date of the 10 Day Notice is November 15, 2014.

The landlord testified that she served the Notice of Dispute Resolution hearing package by handing it to tenant MW on November 15, 2014. The landlord testified that she confirmed that both tenants were still residing in the unit when she served these documents. She also testified that she provided two copies and stated one copy was intended for the co-tenant. Based on this evidence and pursuant to section 89 and 90 of

the *Act*, I find both tenants duly served with the Dispute Resolution hearing documents on November 15, 2014.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order:

89(1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The landlord has not served the tenant PB in a manner required by section 89(1) of the *Act*. I am not satisfied that the tenant was properly served with the landlord's application for dispute resolution.

Based on the landlord's evidence, I find that Tenant MW has been served with the Dispute Resolution hearing documents seeking a monetary Order in accordance with section 89(1) of the *Act* on November 15, 2014, as declared by the landlord. However, I find that the other tenant, Tenant PB, has not been served in accordance with section 89(1) of the *Act*. I find that both tenants have been served with the landlord's application for an Order of Possession in accordance with section 89(2) of the *Act* on November 15, 2014.

Issues 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 and losses arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that this month to month tenancy began March 1, 2010. The current rental amount of \$880.00 per month was payable on the first of each month. The landlord continues to hold a security deposit in the amount of \$425.00 and a pet deposit in the amount of \$425.00 both paid by the tenants on February 24, 2010.

The landlord has applied for an Order of Possession for non-payment of rent for the months of November and December 2014. The landlord testified that the tenants did not pay rent of \$880.00 due on November 1, 2014. The landlord testified that the tenants paid November rent on December 9, 2014. She testified that, at that time, the tenants paid an additional amount of \$50.00 towards December rent but that they have not paid the balance of December rent.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenants did not pay the November 2014 rent after receiving the 10 Day Notice on November 5, 2014 until December 9, 2014. The landlord testified that when she received the late November rent payment, she marked the receipt to the tenants with the words, "for use and occupancy only". She testified that she advised the tenants that she "did not want to reinstate their tenancy". The landlord testified that the tenants have now provided formal, written notice to end their tenancy on December 31, 2014. The landlord testified that the tenants have not paid the remainder of their December rent as of the date of this hearing.

The landlord is also seeking a monetary award in the amended amount of \$830.00 for the remainder of December rent unpaid. She also seeks \$25.00 in late charges for both November and December. The landlord pointed to the residential tenancy agreement submitted for this hearing that indicates a penalty of \$25.00 for late rent.

The landlord testified that, with respect to her application for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, she merely sought a monetary award for unpaid rent and the late fee at this time.

Analysis

The tenants failed to pay the November 2014 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have 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 tenants' failure to take either of these actions within five days led to the end of this tenancy on the corrected effective date of the notice. In this

case, this required the tenants to vacate the premises by November 15, 2014. As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenant(s) do not vacate the rental unit on January 1, 2015 as required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I find that the landlord has submitted evidence sufficient to show that the tenants have not paid their rent in full. I find the landlord is entitled to receive an order for unpaid rent in December 2014. I am issuing the attached monetary order against Tenant MW that includes the landlord's application for \$830.00 in unpaid rent for December 2014.

The landlord also applied for \$25.00 fees for late payment of rent for November and December 2014. She provided copies of the written tenancy agreement which established this late payment fee. I find that the landlord is entitled to \$50.00 in late fees for the months of November and December 2014.

Although the landlord has not made a formal application to retain the tenants' security deposit and pet damage deposit to satisfy her monetary award, the offsetting provisions of section 72 of the *Residential Tenancy Act* allow me to order the landlord to retain the deposits and interest in partial satisfaction of the monetary award. No interest is payable over this period.

The landlord did not make any other application to be compensated for other loss or damage at this time. She withdrew that portion of her claim, stating she was merely seeking unpaid rent and fees.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I am granting the landlord an Order of Possession to be effective January 1, 2015. Should the tenants 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 favour of the landlord against Tenant MW as follows:

| | |
|------------------------------------|----------|
| Rental Arrears for December 2014 | \$830.00 |
| Late Payment Fees for November and | 50.00 |

| | |
|---|----------------|
| December 2014 (\$25.00 x 2) | |
| Less Security Deposit | - 425.00 |
| Less Pet Damage Deposit | - 425.00 |
| Recovery of Filing Fee for this application | 50.00 |
| Total Monetary Award | \$80.00 |

The landlord is provided with formal Orders in the above terms. Should Tenant MW fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 22, 2014

Residential Tenancy Branch

