



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 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;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

All named parties 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 tenants appeared ten minutes after the commencement of the hearing. When the tenants appeared, I reviewed the testimony that I had received from the landlord up to that point.

The landlord testified that he served the tenants with the dispute resolution package on or about 2 January 2015 by posting the package to the tenants' door. The tenants were not certain of the date they received the dispute resolution package, but acknowledged they received the dispute resolution package. Service by posting the dispute resolution package is contemplated for the purposes of an order of possession (subsection 89(2) of the Act), but not contemplated for the purposes of a monetary order (subsection 89(1) of the Act); however, on the basis that the tenants had actual notice of these proceedings, I am satisfied that the tenants were served with the dispute resolution package for the purposes of considering the entirety of the landlord's application.

The landlord testified that he personally served the tenant JS with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 2 December 2014. The tenants did not remember when or how they received the 10 Day Notice, but acknowledged that they did receive the 10 Day Notice. 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.

Preliminary Issue – Landlord’s Request to Amend Application

At the hearing the landlord asked to amend his application to include the correct legal names for both tenants. I allowed this amendment—pursuant to paragraph 64(3)(c)—as both tenants appeared before me and confirmed that they were tenants and that there were no issues with service of documents.

Preliminary Issue – Landlord’s Requests to Amend 10 Day Notice

At the hearing the landlord asked to amend the 10 Day Notice:

- to provide for the correct legal names of both tenants; and
- to change the date on which the rent was due from 1 September 2014, to 1 December 2014.

Subsection 68(2) of the Act allows me to amend a notice given under the Act that does not comply with the Act. In this case, the landlord failed to provide the correct legal names of the tenants and failed to provide the correct date on which rent was due. This mistake does not go to the substance of the 10 Day Notice, that is, there was outstanding rent owed by the person to whom the notice was delivered. The tenants knew that the 10 Day Notice was issued to them and knew that they had not paid rent for, at least, December. For these reasons, I am exercising my discretion to amend the 10 Day Notice to the tenants’ correct legal names and to change the date as indicated.

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, 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 it are set out below.

The landlord testified that he took over as landlord of this rental unit on 19 November 2014. The landlord testified that the tenants had been residing in the rental unit for approximately four or five months before the landlord took over. The landlord testified that monthly rent of \$750.00 was due on the first. The landlord testified that he continued to hold the tenants' security deposit of \$375.00, which was collected at the beginning of this tenancy.

On 2 December 2014, the landlord issued a 10 Day Notice to the tenants. The 10 Day Notice set out that the notice was given for rental arrears of \$1,500.00 that were due on (the amended date of) 1 December 2014. The 10 Day Notice provided that the tenants had until 16 December 2014 to vacate the rental unit.

The landlord testified that the tenants have not paid rent for November, December or January. The landlord testified that he was told by the owners of the rental unit, that the tenants paid approximately \$40.00 towards November's rent. I was not provided with a rental ledger. The landlord testified that this \$40.00 payment was not recorded in his ledger. The tenants admit that they have not paid rent for December or January, but dispute that they have not paid rent for November.

The landlord claims for \$1,925.00:

Item	Amount
Unpaid November Rent	\$750.00
Unpaid December Rent	750.00
Unpaid January Rent	750.00
Retained Security Deposit	-375.00
Recover Filing Fee	50.00
Total Monetary Order Sought	\$1,925.00

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Based on the admissions of the tenants, I find that the tenants have not paid rent for either December or January. The tenants owed at least \$750.00 in rent at the time the 10 Day Notice was issued.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by 16 December 2014. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

I find that the landlord has failed to meet his burden of proof to show that the tenants owed rent for November. I reached this conclusion based on the conflicting evidence of the parties as well as the landlord's own confusion as to the amount of November's rent arrears. The tenants confirmed that they had not paid rent for December or January. I find that the landlord has proven his entitlement to \$1,500.00 in rent arrears.

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 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 issue a monetary order in the landlord's favour in the amount of \$1,175.00 under the following terms:

Item	Amount
Unpaid December Rent	750.00
Unpaid January Rent	750.00
Retained Security Deposit	-375.00
Recover Filing Fee	50.00
Total Monetary Order Sought	\$1,175.00

The landlord is provided with a formal copy of an order of possession. 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.

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: January 21, 2015

Residential Tenancy Branch

