



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:44 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. One of the landlords, Landlord DR, attended the hearing on behalf of both landlords. Landlord DR was given a full opportunity to be heard, to present sworn testimony, and to make submissions. Landlord DR withdrew her application for an Order of Possession.

Landlord DR provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenant on December 22, 2014 by posting on the tenant's rental unit door. The landlord gave sworn testimony that, after he had vacated the rental unit, the tenant returned to the residential premises to take his vehicle from the premises. Landlord DR testified that, while the tenant was on the premises on January 4, 2015, she personally served the tenant with the Application for Dispute Resolution hearing package. I accept that the tenant was deemed served with the 10 Day Notice on December 25, 2014, 3 days after its posting and that he was duly served with the landlords' Application for Dispute Resolution hearing package.

Issues 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 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 month to month tenancy agreement began on February 1, 2011 between the tenant and the former landlords. Landlord DR testified that she and her co-landlord have owned the property for approximately four months. Landlord DR provided undisputed testimony that the current rental amount for this tenancy is \$800.00 payable on the first of each month. Landlord DR testified that she continues to hold a \$325.00 security deposit paid by the tenant on February 1, 2011. Landlord DR testified that the tenant vacated the rental unit as of January 2, 2015, providing no forwarding address or contact information.

The landlords applied for an Order of Possession for unpaid rent for the month of December 2014. Landlord DR testified that the tenant has now vacated the rental unit and new tenants moved in as of January 15, 2015. She withdrew the application for an Order of Possession however the landlords also sought a monetary award of \$1250.00 for unpaid rent, a portion of January 2015 rent and recovery of the \$50.00 filing fee with respect to this application. They also applied to retain the security deposit for this tenancy in partial satisfaction of a monetary award.

Landlord DR testified that the tenant failed to pay \$800.00 rent for December 2014 on December 1 as required by the tenancy agreement. She testified that he has provided no further payments at this time. She also testified that he has indicated to her that he will not pay his rent. Landlord DR testified that the tenant has now vacated the rental unit however he did not do so until January 2, 2015. She testified that the tenant indicated to her that he would not clean the rental unit. Landlord DR testified that, on inspection of the rental unit after January 2, 2015, she found that the unit was extremely dirty. Further, she testified that the tenant had not returned the keys for the rental unit and so the landlords had to change the locks. Finally, she testified that all utilities in the rental unit had been disconnected due to lack of payment. Landlord DR testified that all of these circumstances made it difficult to re-rent the unit before January 15, 2015. She testified that it was necessary to clean the suite, restore services and advertise to rent the unit. She testified that she advertised immediately but that it was very difficult to find a tenant able to take the rental unit before January 15, 2015 or February 1, 2015. As of January 15, 2015, new tenants moved into the unit.

The landlord seeks a monetary award as follows;

Rental Arrears for December 2014	\$800.00
Rental Arrears for ½ January 2015	400.00
Less Security Deposit and Interest (\$325.00 plus 0 interest)	-325.00
Recovery of Filing Fee for this application	50.00
Total Monetary Amount Sought	\$925.00

Analysis

Order of Possession: The landlord withdrew her application for an Order of Possession.

Monetary Request: Landlord DR provided sworn, undisputed testimony that the tenant failed to pay December 2014 rent in the amount of \$800.00. As a tenant is required, under section 26 of the *Act* to pay rent in full and on time as required by their tenancy agreement, without exception, I find that the landlords are entitled to receive an order for unpaid rent in December 2014.

Landlord DR testified providing reasons why she was not in a position to rent the premises for January 1, 2015. First, the tenant did not vacate the rental unit until January 2, 2015. Second, considerable cleaning of the premises was required following this tenancy. Third, the tenant did not return the keys forcing the landlord to re-key the locks on the premises. Landlord DR testified to efforts to rent the unit as soon as possible. The rental unit was rented and inhabited within 13 days of the tenant vacating the unit. I accept this uncontested evidence offered by the landlord of reasonable efforts to re-rent and steps necessary by landlords before re-renting. Based on Landlord DR's undisputed sworn testimony that she was unable to rent the premises for the first two weeks of January, I am issuing the attached monetary order that includes the landlords' application for \$400.00 in unpaid rent in the first half of January 2015.

Security Deposit: Landlord DR testified that she continues to hold a security deposit of \$325.00 plus any interest from February 2011 to the date of this decision for this tenancy. There is no interest payable for this time period. I will allow the landlords to retain the security deposit in partial satisfaction of the monetary award.

Filing Fee: 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.

Conclusion

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for December 2014	\$800.00
Rental Arrears for January 2015	400.00
Less Security Deposit and Interest (\$325.00 plus 0 interest)	-325.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$925.00

The landlords are provided with formal Orders in the above terms. Should the tenant(s) 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: January 23, 2015

Residential Tenancy Branch

