



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 landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities, 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;
- other remedies identified as recovering late fees, pursuant to the tenancy agreement and section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants did not attend this hearing although it lasted approximately 58 minutes. The landlord and her agent, CC (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had authority to speak on her behalf at the hearing.

The landlord gave sworn testimony that she served both tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 2, 2015 ("10 Day Notice"), by way of posting it to the tenants' rental unit door on January 2, 2015. The landlord attached a signed proof of service with her application. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on January 5, 2015, three days after its posting.

The landlord testified that she served both tenants with the Application for Dispute Resolution hearing package ("Application") on January 16, 2015, by way of registered mail. The landlord provided Canada Post customer receipts and tracking numbers with her Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenants

were deemed served with the Application on January 21, 2015, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and utilities?

Is the landlord entitled to a monetary award for unpaid rent, utilities and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The landlord testified that this tenancy began on October 31, 2014 for a fixed term ending on January 31, 2015, after which the tenants are required to vacate the rental unit unless the landlord agrees to renew the lease. Monthly rent in the amount of \$1,100.00 is payable on the last day of each month, as advance payment for the following month. The landlord confirmed that as per the tenancy agreement, rent is \$650.00 per month while utilities, hydro, cable and internet are an additional \$450.00 per month, totalling \$1,100.00 per month. A security deposit of \$550.00 and a pet damage deposit of \$550.00 were paid by the tenants and the landlord continues to retain these deposits. The rental unit is the basement suite of the landlord's house, and the landlord occupies the main floor of the house. A written tenancy agreement was provided with the landlord's Application.

The landlord testified that the tenants advised the landlord, during the last week of January 2015 and again on January 31, 2015, that they were vacating the rental unit on February 1, 2015. The landlord stated that she last saw the tenants at the rental unit around 3:45 a.m. on February 2, 2015, and that the rental unit keys were left by the tenants in the rental unit, on this date.

The landlord stated that the tenants paid rent and utilities of \$2,200.00 total in one cash payment for November and December 2014. She indicated that rent and utilities in the amount of \$2,200.00 total is unpaid for January and February 2015. The landlord also seeks, as per the tenancy agreement, late fees in the amount of \$25.00 for each of January and February 2015, totalling \$50.00. The landlord seeks a monetary order in the total amount of \$2,250.00 for unpaid rent, utilities and late fees for January and February 2015.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$650.00 and utilities in the amount of \$450.00 were due on December 31, 2014, for January 2015. The notice indicates an effective move-out date of January 12, 2015. The landlord confirmed that no payments have been made by the tenants since the 10 Day Notice was served upon them.

The landlord stated that she entered the rental unit on February 2, 2015 and discovered that the tenants had vandalized the unit and a lot of repair had to be done. The landlord stated that she would be making a future application for a monetary order for damage to the rental unit. The landlord confirmed that she had only applied for unpaid rent and utilities for this Application, given that the tenants were still in the rental unit on January 13, 2015, when her Application was filed. The landlord stated that she was seeking the entire month's rent, utilities and late fees for February 2015, as she has to clean, fix and renovate the rental unit before it can be advertised to be re-rented. She indicated that she called a company that she is familiar with, to discuss fixing the rental unit, and they indicated that they were busy for the next month and that it would take at least two weeks to fix the damage in the rental unit. The landlord stated that she was not seeking March 2015 rent or utilities from the tenants.

The landlord is also seeking to recover the filing fee of \$50.00 for this Application from the tenants.

Analysis

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

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. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the

agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused a loss of rent, utilities and late fees for February 2015.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent and utilities due on December 31, 2014, within five days of being deemed to have received the 10 Day Notice. The tenants did not make any partial payments towards this unpaid rent or utilities. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on January 15, 2015, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by January 15, 2015. As this may not have occurred, I find that the landlord is entitled to a 2 day Order of Possession.

The landlord provided undisputed evidence that the tenants failed to pay \$1,100.00 in rent and utilities for January 2015, while they were still residing in the rental unit. The landlord provided undisputed evidence that the tenants failed to pay the late fee of \$25.00, for this non-payment of rent, as per the tenancy agreement. As per section 7(1)(d) and 7(2) of the Residential Tenancy Regulation, the landlord is permitted to charge an administration fee of \$25.00 for late payment of rent as it is provided for in the tenancy agreement. Accordingly, the landlord is entitled to \$1,100.00 in unpaid rent and utilities as well as the \$25.00 late fee for January 2015.

The landlord indicated that she was seeking full rent, utilities and late fees for February 2015, in the total amount of \$1,125.00. The landlord stated that there is damage to the rental unit and it requires repair before it can be advertised for rental. The landlord indicated that this repair may take some time. However, the landlord has not provided any documentary evidence regarding any required repairs or the time required to complete such repairs.

The tenants were required to vacate the rental unit by January 15, 2015, as per the 10 Day Notice, and in any event by January 31, 2015, as per the tenancy agreement. The tenants vacated the rental unit on February 2, 2015, causing loss to the landlord under section 7(1) of the *Act*. The landlord already viewed the rental unit on February 2, 2015 and spoke with a company about fixing damage. The landlord is required to mitigate her losses as per section 7(2) of the *Act*. As per the tenancy agreement, rent for

February 2015 would have been due on January 31, 2015, if the tenants remained in the rental unit. Therefore, I find that the landlord is entitled to half a month's rent and utilities due under the tenancy agreement, for February 2015, totalling \$550.00. I find that this half month period is sufficient time for the landlord to clean and repair the rental unit, as well as advertise the unit for rental. I find that the landlord is also entitled to the full late fee of \$25.00 for February 2015 rent, as the rent was not paid by the tenants when it was due.

The landlord testified that she continues to hold the tenants' security and pet damage deposits of \$550.00 each, totaling \$1,100.00. Although the landlord did not apply to retain both deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security and pet damage deposits 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 she is entitled to recover the \$50.00 filing fee paid for the Application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants or anyone on the premises 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 \$650.00 against the tenants as follows:

Item	Amount
January 2015 Rent and Utilities	\$1,100.00
January 2015 Late Fee	25.00
February 2015 Rent and Utilities	550.00
February 2015 Late Fee	25.00
Less Security Deposit	-550.00
Less Pet Damage Deposit	-550.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$650.00

The landlord is provided with a monetary order in the amount of \$650.00 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 this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order 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: February 10, 2015

Residential Tenancy Branch

