



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 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 tenants' 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1:51 p.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 1:30 p.m. One landlord ("Landlord WC") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. He called one witness in support of his application.

Landlord WC provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was served to both tenants by posting the 10 Day Notice on the door of the rental unit on November 4, 2014. Pursuant to section 88 and 90 of the *Act*, the tenants were deemed served with the 10 Day Notice on November 7, 2014. Landlord WC gave sworn testimony that he served both tenants with the Application for Dispute Resolution hearing package on January 7, 2014 by sending individual registered mail packages to each tenants. Pursuant to section 89 and 90 of the *Act*, I accept that both tenants were deemed served with the landlords' Application for Dispute Resolution Hearing package on January 12, 2015, 5 days after the mailings. Landlord WC provided undisputed sworn testimony that, on December 4, 2014, he personally served the tenants with another 10 Day Notice with respect to unpaid December rent.

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?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of any monetary award?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Landlord WC gave evidence, in sworn testimony and in providing a copy of the tenancy agreement, that this tenancy for a one year fixed term began on August 1, 2014. The rental amount for this unit was established at \$2600.00 payable on the first of each month. Landlord WC testified that he continued to hold the \$1300.00 security deposit that the tenants paid on July 13, 2014. Landlord WC testified that the tenants did not pay a pet deposit but have a large dog in the rental unit. He testified that both the dog and the two tenants continue to reside in the rental unit.

The landlords have applied for an Order of Possession for unpaid rent for the month of November 2014, as well as a portion of unpaid rent from October 2014. Landlord WC testified that the tenants did not pay full rent in October 2014, paying \$2000.00 of the \$2600.00 rental amount. Landlord WC testified that the tenants did provide a \$2600.00 cheque to the landlords for November 2014 rent, however that cheque was returned due to insufficient funds. The 10 Day Notice was issued on November 4, 2014 indicating an outstanding amount of \$3305.00, reflecting the \$600.00 outstanding amount from October and the November rent. These outstanding amounts total \$3200.00. I correct the landlords' 10 Day Notice given that the amount is a reduction from the amount shown and therefore does not prejudice the tenants who did not attend this hearing in any way.

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent for November 2014. Landlord WC testified that the tenants did not pay the outstanding October or November rent after receiving the 10 Day Notice on November 7, 2014. After the expiration of that 10 Day period, the landlords issued another 10 Day Notice in December. Landlord WC testified that he has made several attempts to collect rent from the tenants but has been unsuccessful.

The landlords' witness is a previous tenant of the landlord. She testified that, as a realtor, she would often act as a go-between the landlords and the current tenants. She testified that the tenants claimed to not be able to communicate with the landlords and that there was a language barrier. The landlords' witness testified that she was often party to attempts to collect rent from the tenants, arranging meetings and attending with the landlords to meet the tenants. She testified that, often the tenants would not show

up for scheduled meetings and, if they did, “they were rude and made no commitments to pay the outstanding rent”.

Landlord WC testified that the tenants have made no attempts to pay rent since November. He testified that the tenants now owe the \$600.00 outstanding from October 2014 as well as the full rental amount from November 2014, December 2014, January 2015 and February 2015. On January 6, 2015, the landlords applied for an Order of Possession.

The landlords are also seeking a monetary award of \$12.00 for a December late charge as well as reimbursement of the \$100.00 filing fee in this application. The landlords seek a total monetary order as follows;

Rental Arrears for October 2014	\$600.00
Rental Arrears for November 2014	\$2600.00
Rental Arrears for December 2014	\$2600.00
Rental Arrears for January 2015	\$2600.00
Rental Arrears for February 2015	\$2600.00
Late Payment Fee for November 2014	\$12.00
Recovery of Filing Fee for this application	\$100.00
Total Monetary Amount Sought	\$11,112.00

Analysis

The tenants failed to pay the November rent within five days of receiving the 10 Day Notice to End Tenancy. The landlords provided a further opportunity to pay rent by issuing a 10 Day Notice in December and waiting until January 2015 to apply for an Order of Possession. 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 his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by November 17, 2014 (the corrected effective date of the 10 Day Notice). As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

I find that the landlords are entitled to receive a monetary award for unpaid rent in \$11,112.00 based on the testimony and evidence with respect to the tenants' lack of rent payment. I am issuing the attached monetary order that includes the landlords' application for \$11,000.00 in unpaid rent for a portion of October 2014 (\$600.00) and full

rent in the amount of \$2600.00 per month for November 2014, December 2014, January 2015 and February 2015.

The landlords also applied for \$12.00 for late payment of rent fee with respect to the returned November 2014 rent cheque. Landlord WC provided testimony, supported by documentation, that the late fee was established at the beginning of this tenancy. He has not sought late fees with respect to unpaid rent in 2015. I find that the landlords are entitled to a \$12.00 late fee for the month of November.

Landlord WC testified that the landlords continue to hold a security deposit of \$1300.00 plus interest from July 13, 2014 to the date of this decision for this tenancy. There is no interest payable for this period. I will allow the landlords to retain the security deposit in partial satisfaction of the monetary award.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

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

Rental Arrears for October 2014	\$600.00
Rental Arrears for November 2014	\$2600.00
Rental Arrears for December 2014	\$2600.00
Rental Arrears for January 2015	\$2600.00
Rental Arrears for February 2015	\$2600.00
Late Payment Fee for November 2014	\$12.00
Less Security Deposit and Interest (\$1300.00 - no interest)	-\$1300.00
Recovery of Filing Fee for this application	\$100.00
Total Monetary Award	\$9812.00

The landlords are provided with formal Orders in the above terms. Should the tenants(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: February 16, 2015

Residential Tenancy Branch

