



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, pursuant to section 55;
- a monetary order for unpaid rent, 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 the filing fee for this application from the tenants, pursuant to section 72.

The tenants did not attend this hearing although it lasted approximately 29 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that he served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, dated January 7, 2015 ("10 Day Notice"), by way of posting it to the tenants' rental unit door. 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 10, 2015, three days after its posting.

The landlord testified that he served both tenants with two separate copies of the Application for Dispute Resolution hearing package ("Application") on January 27, 2015, by way of registered mail. The landlord provided two Canada Post tracking numbers orally during the hearing, to confirm this service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application on February 1, 2015, five days after its registered mailing.

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 for 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 November 21, 2014, for a fixed term of one year. Monthly rent in the amount of \$1,450.00 is payable on the 21st day of each month. A security deposit of \$725.00 was paid by the tenants on November 19, 2014 and the landlord continues to retain this deposit. The landlord owns the rental unit.

The landlord testified that he was advised by the strata building manager that the tenants may have vacated the rental unit on the day before this hearing. However, the landlord has not yet entered the rental unit to confirm whether the tenants have vacated. The landlord indicated that the tenants have not provided him with a forwarding address for service. The landlord testified that he still requires an order of possession against both tenants.

The landlord stated that rent in the amount of \$1,450.00 is unpaid for each of December 2014 and January 2015. The landlord seeks a monetary order in the total amount of \$2,900.00 for unpaid rent.

The landlord issued the 10 Day Notice, indicating that rent in the amount of \$1,450.00 was due on December 21, 2014. The notice indicates an effective move-out date of January 18, 2015. The landlord confirmed that no rent payments have been made by the tenants since the 10 Day Notice was served upon them.

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

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on December 21, 2014, within five days of being deemed to have received the 10 Day Notice. The tenants did not make any partial payments towards rent. 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 20, 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 20, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

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 from January 21 to February 21, 2015.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,450.00 for the period from December 21, 2014 to January 21, 2015. Therefore, I find that the landlord is entitled to \$1,450.00 in rental arrears for the above period.

The tenants were required to vacate the rental unit by January 20, 2015. As per the landlord's evidence, the tenants remained in the rental unit until at least February 10, 2015 and they may still be there, causing loss to the landlord under section 7(1) of the *Act*. However, the landlord is required to mitigate his losses as per section 7(2) of the *Act*. Rent of \$1,450.00 was due on January 21, 2015. The tenants did not make any payments towards this rent. Therefore, I find that the landlord is entitled to \$1,450.00 in rental arrears for the entire month from January 21 to February 21, 2015. Although the tenants may have vacated the rental unit on February 10, 2015, I find that the landlord is entitled to the full month of rent until February 21, 2015. I make this finding because the landlord has to serve the tenants with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, advertise the rental unit and attempt to re-rent the unit. The landlord indicated that he intends to re-rent the unit to other tenants. The landlord stated that he is not aware of the full extent of any potential damage caused by the tenants. He indicated that he is aware of some damage caused by the tenants to the exterior of the rental unit, but that he has not yet entered the rental unit to determine the interior damage.

The landlord testified that he continues to hold the tenants' security deposit of \$725.00. Although the landlord did not apply to retain the tenants' security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' 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 he 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 \$2,225.00 against the tenants as follows:

Item	Amount
December 2014 Rent	\$1450.00
January 2015 Rent	1450.00
Less Security Deposit	-725.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2,225.00

The landlord is provided with a monetary order in the amount of \$2,225.00 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 11, 2015

Residential Tenancy Branch

