



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O; 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 their filing fee for this application from the tenants pursuant to section 72.

The landlords' application names two respondents: SP and AD.

This hearing also dealt with an application by SP pursuant to the Act for an "other" remedy. SP's application names CW as the respondent.

The landlord CW (the landlord) attended the hearing. The landlord confirmed she had authority to act on behalf of both landlords. Neither SP nor AD attended this hearing, although I waited until 1129 in order to enable them to connect with this teleconference hearing scheduled for 1100. 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.

Preliminary Issue – Application of SP

Rule 10.1 of the Rules of Procedure provides that:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from SP and in the absence of SP's participation in this hearing, I order that SP's application is dismissed without leave to reapply.

Preliminary Issue – Status of Parties and Amendment to Landlord's Application

The landlords provided me with a tenancy agreement. The tenancy agreement was signed by the tenant AD, the tenant RB, and the landlords.

The landlord testified that she believes that there are currently five occupants in the rental unit: tenant AD, tenant RB, occupant TH, occupant SP, and an unknown female occupant who the landlord believes to be "with" occupant TH. The landlord testified that she understood that the tenants were AD and RB. The landlord testified that she received one payment of rent on or about 2 December 2014 and that this payment was received from AD.

On the basis of the landlords' documentary evidence and the uncontested, sworn testimony of the landlord, I find that the tenants to this tenancy are AD and RB. I find that anyone else who is currently living in the rental unit is an occupant and not a tenant. This includes the occupant SP.

Subsection 6(1) of the Act sets out that the "rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement." Similarly, *Residential Tenancy Policy Guideline*, "13. Rights and Responsibilities of Co-tenants" (Guideline 13) sets out:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

As SP is an occupant, she is not a proper party to these proceedings.

The landlord asked that I amend the landlords' application, pursuant to paragraph 64(3)(c), to include both of the tenants. I am unable to make this amendment as the tenant RB may have not understood that these proceedings affected him as he was not named in the original application; in any event, this does not unduly prejudice the landlords' position as any issued order of possession applies to the tenant and all other occupants and any issued monetary order is enforceable in whole against the tenant AD as the tenants share joint and several liability.

Preliminary Issue – Service of Dispute Resolution Package

The landlords provided me with a certificate of service from a process server. The certificate of service sets out that the process server personally served the tenant AD at 1916 on 5 February 2015. This service was witnessed by a second process server. The landlords personally served the tenant AD with the landlords' dispute resolution package. I find that the landlords have satisfied both the service requirements for paragraphs 89(1)(a) and 89(2)(a) in respect of the tenant AD.

Issue(s) 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 the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the both the landlords' claim and my findings around it are set out below.

The landlords provided me with a written tenancy agreement. This agreement is dated 29 November 2014 for a tenancy beginning 1 December 2014. Monthly rent of \$1,100.00 is due on the first. The landlord testified that the landlords continue to hold the tenants' security deposit of \$550.00, which was collected on 25 November 2014.

On 16 January 2015 at approximately 1030, the landlords served the tenants with the 10 Day Notice. The 10 Day Notice was dated 16 January 2015 and set out an effective

date to end the tenancy of 26 January 2015. The 10 Day Notice names both tenants. The 10 Day Notice set out that the tenants had failed to pay \$1,100.00 of unpaid rent that was due 1 January 2015.

The landlord provided sworn and uncontested testimony that she left the 10 Day Notice with the occupant TH on 16 January 2015. The landlord testified that she was accompanied by a police officer. The landlords provided me with a proof of service document for the 10 Day Notice. The proof of service sets out that the landlords left a copy of the 10 Day Notice with the occupant TH. The “special details” of the 10 Day Notice includes the following notation:

hand delivered to [TH], who is at the home dailey (sic), his truck is always there at night and early morning as observed by ourselves and neighbours so I believe he is living there.

The unsigned witness statement indicates that a police officer witnessed the service. I was provided with a copy of the police officer’s business card and phone number as well as a file number.

The landlord testified that the only rent the landlords have received in respect of this tenancy was received on or about 2 December 2014 from the tenant AD. The landlord testified that the tenants have not paid rent for either January or February.

The landlords seek a total monetary order in the amount of \$1,700.00:

Item	Amount
Unpaid January Rent	\$1,100.00
Unpaid February Rent	1,100.00
Less Security Deposit Retained	-550.00
Recovery of Filing Fee	50.00
Total Monetary Order Sought	\$1,700.00

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.

I find that the landlords have effectively served the 10 Day Notice to the tenants pursuant to paragraph 88(e) by leaving the notice with the occupant TH.

The landlord provided sworn and uncontested testimony that the tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have

not provided any evidence that they were entitled to withhold rent. I find that the 10 Day Notice is valid. Thus the tenants were required to vacate the premises by 26 January 2015. As that has not occurred, I find that the landlords are entitled to a two-day order of possession.

The landlord has provided sworn and uncontested testimony that the tenants have unpaid rental arrears totaling \$2,200.00. I find that the landlords have proven their entitlement to the rent arrears. The landlords are entitled to a monetary order enforceable against the tenant AD to recover this amount.

The landlords applied to keep the tenants' security deposit. Pursuant to Guideline 13: Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

The landlord testified that the landlords continue to hold the tenants' \$550.00 security deposit, plus interest, paid on 25 November 2014. Over that period, no interest is payable. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award as the tenants are jointly and severally liable for the rent arrears.

As the landlords were successful in this application, I find that the landlords were entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

SP's application is dismissed without leave to reapply.

The landlords are provided with a formal copy of an order of possession. Should the tenant(s) and any other occupant of 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 landlords' favour against the tenant AD in the amount of \$1,700.00 under the following terms:

Item	Amount
Unpaid January Rent	\$1,100.00
Unpaid February Rent	1,100.00
Less Security Deposit Retained	-550.00
Recovery of Filing Fee	50.00
Total Monetary Order	\$1,700.00

The landlords are provided with this order in the above terms and tenant AD must be served with this order as soon as possible. Should tenant AD fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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: February 18, 2015

Residential Tenancy Branch