



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, 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 and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover its filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1113 in order to enable the tenants 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. The landlord was represented by its agent. The agent is an employee of the landlord.

The agent testified that the landlord served the tenants with the dispute resolution package on 19 February 2015 by registered mail. The agent provided me with Canada Post tracking numbers that showed the same. On the basis of this evidence, I am satisfied that the tenants were deemed served with dispute resolution package pursuant to sections 89 and 90 of the Act.

The agent testified that the landlord served the tenants with the 10 Day Notice on 2 February 2015 by posting the notice to the tenants' door. On the basis of this evidence, I am satisfied that the tenants were deemed served with 10 Day Notice pursuant to sections 88 and 90 of the Act.

Preliminary Issue – Landlord's Request to Amend Application

At the hearing the agent asked to amend the landlord's application to include March's rent and withdraw the late fee claim for February.

Paragraph 64(3)(c) allows me to amend an application for dispute resolution.

As the tenants reasonably ought to have known that March rent would be owed if they continued to occupy the rental unit, I have allowed the amendment as there is no undue prejudice to the tenants. As well, I allow the landlord to withdraw its claim for the late fee as there is no prejudice to the tenants.

Issue(s) 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? Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

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

On 30 June 2010, the tenants and landlord entered into a tenancy agreement. The agreement purported to cover a tenancy that began 1 July 2010. Current monthly rent of \$913.32 is due on the first. The agent testified that the landlord continues to hold the tenants security deposit in the amount of \$425.00, which was collected in June 2010.

On 2 February 2015, the landlord issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 2 February 2015 and set out an effective date of 15 February 2015. The 10 Day Notice set out that the tenant failed to pay \$913.32.00 in rent that was due on 1 February 2015.

The agent testified that the landlord has not received any payments from the tenant since January 2015.

The landlord claims for rental arrears totaling \$1,826.64:

Item	Amount
Unpaid February Rent	\$913.32
Unpaid March Rent	913.32
Total Monetary Order Sought	\$1,826.64

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.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by 15 February 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The agent has provided sworn and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,826.64. I find that the landlord has proven its entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord testified that he continued to hold the tenants' \$425.00 security deposit, plus interest, paid in June 2010. Over that period, no interest is payable. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

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

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,451.64 under the following terms:

Item	Amount
Unpaid February Rent	\$913.32
Unpaid March Rent	913.32
Recover Filing Fee	50.00
Offset Security Deposit	-425.00
Total Monetary Order	\$1,451.64

The landlord is provided with these orders 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 these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

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: March 17, 2015

Residential Tenancy Branch

