



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 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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 1112 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 testified that he served the tenants with the dispute resolution package on 13 March 2015 by registered mail. The landlord provided me with Canada Post customer receipts 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 landlord testified that he personally served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) on 11 February 2015 by delivering the notice to the tenant KJ. On the basis of this evidence, I am satisfied that the tenants were served with 10 Day Notice pursuant to section 88 of the Act.

Preliminary Issue – Landlord's Amendment

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

The landlord asked that I exercise my discretion to amend his application to include unpaid rent for April. As the tenants reasonably ought to have known that this amount was owed if they continued to occupy the rental unit, I have allowed the amendment as there is no undue 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 retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

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

This tenancy began 1 September 2007. On 10 September 2007, the tenants and landlord signed a tenancy agreement. Monthly rent of \$1,100.00 is due on the first. The landlord testified that he continues to hold the tenants' security deposit in the amount of \$550.00, which was collected 10 September 2007.

On 11 February 2015, the landlord served the 10 Day Notice to the tenants. The 10 Day Notice was dated 11 February 2015 and set out an effective date of 21 February 2015. The 10 Day Notice set out that the tenants failed to pay \$996.95 in rent that was due on 1 February 2015. The landlord testified that the last time the tenants were current on their rent was December 2013. The landlord testified that the amount of the 10 Day Notice included \$75.00 in late fees.

The landlord received four payments from the tenants subsequent to the 10 Day Notice and issued receipts to the tenants on the basis of "use and occupancy only".

The landlord claims for rent arrears totaling \$771.95:

Item	Amount
Unpaid February Rent	\$921.95
Unpaid March Rent	1,100.00
Payment Rec'd 1 March 2015	-900.00
Payment Rec'd 2 March 2015	-275.00
Unpaid April Rent	1,100.00
Payment Rec'd 1 April 2015	-900.00
Payment Rec'd 2 April 2015	-275.00
Total Rent Arrears	\$771.95

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 21 February 2015. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has not reinstated the tenancy by accepting payments after the effective date of the 10 Day Notice as the payments were accepted on the basis of "use and occupancy only".

The landlord has provided sworn and uncontested testimony that the tenants have unpaid rental arrears totaling \$771.95. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

The landlord applied to keep the tenants' security deposit plus interest. Over that period \$10.84 is payable in interest. I allow the landlord to retain the security deposit plus interest 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 \$1,735.00 under the following terms:

Item	Amount
Rent Arrears	\$771.95
Recover Filing Fee	50.00
Offset Security Deposit and Interest	-560.84
Total Monetary Order	\$261.11

The landlord is provided with this order 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.

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: April 20, 2015

Residential Tenancy Branch

