



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNDC 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 and/or cause pursuant to section 55;
- a monetary order for unpaid rent and damage or loss 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. Both landlords were in attendance and were given a full opportunity to be heard, to present evidence and to make submissions. Both landlords provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") was personally served to the tenants on March 3, 2015. The landlords acknowledge that the tenants have since paid March 2015 rent. Both landlords also gave evidence that a 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") was personally served to the tenants on April 1, 2015. Landlord HG gave sworn testimony that he served both tenants with copies of the Application for Dispute Resolution hearing package on May 5, 2015. He testified that the packages were returned with an indication that they had not been picked up from the post office. Both landlords testified that Landlord GG personally served the tenants with the Application for Dispute Resolution package at their rental unit door, including all materials submitted for this application and hearing. I accept that the tenants were duly served with the 10 Day Notice and the 1 Month Notice. Pursuant to section 89 and 90 of the *Act* as well as the Residential Tenancy Policy Guideline No. 12 regarding deemed service of registered mailings, I find that the tenants were served with the landlords' Application for Dispute Resolution hearing package on May 10, 2015, 5 days after its registered mailing.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent and/or cause?
Are the landlords entitled to a monetary award for unpaid rent, damage or loss arising out of this tenancy?
Are the landlords entitled to retain all or a portion of the tenants' security deposit towards any monetary award?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

Landlord HG testified that the rental agreement for this tenancy began on January 1, 2015. The rental amount of \$1200.00 is payable on the first of each month. Landlord HG testified that the landlords continue to hold a \$600.00 security deposit paid by the tenants on January 1, 2015. Both landlords testified that the tenants continue to reside in the rental unit.

The landlords have applied for an Order of Possession for cause providing two grounds;

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.*

The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 3, 2015 after the tenant failed to pay April rent on April 1, 2015. Landlord HG acknowledge that the tenant paid March 2015 rent but that it was paid late. Landlord GG testified that there has been a history of late payment of rent by the tenants where they do not pay on the first of the month as required. He testified that, often, the tenants contact him after the middle of the month stating that they will pay off the rental arrears in the next month.

Landlord HG testified that the tenants also did not pay rent of \$1200.00 due on May 1, 2015. Landlord GG testified that, after June 1, 2015, the tenants provided \$800.00 towards their rental arrears. Landlord HG testified that, as of the date of this hearing, the tenants owe the following amounts in rent;

Outstanding Rent Payments by Tenants	Amount
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Unpaid Rent – April 2015	\$1200.00
Unpaid Rent – May 2015	1200.00
Unpaid Rent – June 2015	1200.00
Amount paid by tenants towards rental arrears	-800.00
Total Rental Arrears	\$2800.00

Landlord GG testified that, when \$800.00 was given to him by the tenants, he stated that they cannot stay in the rental unit if they are not going to pay the rent. He stated that he told the tenants that they had more rent to pay and that it had to be paid immediately. He testified that he stated, “if you can’t pay, you can’t stay.”

Both landlords testified that they have made numerous attempts to contact the tenants to arrange for payment of their rent and to discuss tenancy issues. Landlord HG testified that the tenants do not have a telephone. He testified that, on several occasions, he or Landlord GG attended to the tenants’ rental unit and knocked on the door in an attempt to resolve the tenancy matters with the tenants. Landlord GG also testified that notices of strata violations by the tenants were provided to the tenants by leaving them at the door of the rental unit when they did not answer.

The landlords submitted copies of strata by-law violation and fine notifications sent from the strata within the residential premises to the landlord. These fines and charges for tenant behaviour total \$331.50. The letters state as follows;

- March 13, 2015: “a council member received a noise [complaint] regarding the tenants in your suite...several times a week loud parties are held...Council has fined you \$100.00...”
- March 19, 2015: “Another noise complaint regarding the tenants in your suite was made... music is so loud you can hear it on other side of building...a fine of \$150.00 has been charged to your account..”
- April 23, 2015: “a child residing or visiting your unit... vomited in front of the elevators and it was not cleaned up or reported to Council. ... The cost of \$31.50 has been levied to your account for the cost of cleaning the common area ... where the child was sick... a fine of \$50.00 has been charged to your account...”

The landlords both testified that they receive ongoing complaints regarding disturbances to other occupants of the rental premises by the tenants regularly. Landlord GG testified

that another violation letter with a fine in the amount of \$200.00 has just been received from the strata by the landlords.

Analysis

The landlords have both provided sworn, undisputed testimony that the tenants regularly pay their rent late. They provided a copy of a previous notice to end tenancy issued when rent was not paid on time in March 2015. They testified that the rent was not paid in April or May 2015. They testified that a portion of rent (\$800.00) has been paid by the tenants but that \$2800.00 remains outstanding as of the date of this hearing. Landlord GG provided sworn testimony that he was clear to the tenants that any payment did not re-instate their tenancy. I find there is sufficient evidence submitted at this hearing to show that the tenants repeatedly paid their rent late.

Based on the landlord's undisputed evidence, I am satisfied that the landlords showed sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause relating to the late payment of rent. However, I also note that the landlords provided evidence sufficient to show on a balance of probabilities that the tenants unreasonably disturbed another occupant or occupants within the residential premises. The landlords provided documentary evidence that sufficiently supports their claim that the tenants both disturb other occupants with noise and parties but that they also have caused a level of disturbance that affects the landlords, both by the regular complaints by other occupants, as well as the complaints forwarded by the strata in this building and by the imposition of fines to the landlord's account.

It is also worth noting that the tenants have not made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the tenants' failure to take this action within ten days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 30, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Based on the evidence that the tenants have not paid rent for the months of April and May 2015 or paid full rent for June 2015, I find that the landlord is entitled to receive an order for unpaid rent for those months. The landlords have presented both sworn and undisputed testimony regarding outstanding rent as well as documentation to support their testimony that the tenants continue to owe \$2800.00 in unpaid rent. I am issuing the attached monetary order that includes the landlord's application for \$2800.00 in rental arrears.

The landlord also applied for \$331.50 in strata fines for violations of strata by-laws by the tenants. The landlords submitted evidence that clearly shows these fines have been assessed based on violations by the tenants. The landlords' evidence shows that they have suffered a financial loss of \$331.50 for the payment of these fines. I find that the landlord is entitled to a monetary award in the amount of \$331.50 from the tenants for the fines.

The landlords applied for \$220.00 in lost wages. Landlord HG testified that he does not live close to the Residential Tenancy Branch and so had to take a 10 hour day off work at \$20.00 per hour to attend and file this application. He testified as to the nature and details, including that his employment is full time. However, Landlord HG did not provide any evidence to support the details provided regarding his employment or any loss that he suffered on a particular date. As section 67 of the *Act* requires a party meet the burden of proof when claiming monetary loss against another party, I do not find that the landlords have met the burden and requirements with respect to this portion of their claim. Therefore, I dismiss the landlord's application for recovery of lost wages.

Landlord HG testified that the landlords continue to hold a security deposit of \$600.00 plus any interest to the date of this decision. There is no interest payable for this time period. Pursuant to section 72(2) that allows a landlord to retain or deduct from a tenants' security deposit when they are awarded a monetary order against the tenants, I will allow the landlord 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 \$50.00 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. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I dismiss the landlord's application for recovery of lost wages without leave to reapply.

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

Item	Amount
Unpaid Rent – April 2015	\$1200.00
Unpaid Rent – May 2015	1200.00

Unpaid Rent – June 2015	1200.00
Amount paid by tenants towards rental arrears	-800.00
Strata fines levied on landlords	331.50
Less Security Deposit	-600.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$2581.50

The landlords are provided with formal Orders in the above terms. Should the tenant(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: June 22, 2015

Residential Tenancy Branch

