



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain 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 two tenants did not attend this hearing, which lasted approximately 15 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 testified that he personally served the two tenants with the landlord's application for dispute resolution hearing package ("Application") on December 15, 2015 to the female tenant and on December 17, 2015 to the male tenant. The landlord stated that although his application was filed on November 17, 2015, the two tenants were in jail from November 6 and 7, 2015 until the above two dates, when they returned to the rental unit. In accordance with sections 89 and 90 of the *Act*, I find that the female tenant was served on December 15, 2015 and the male tenant was served on December 17, 2015, with the landlord's Application.

The landlord testified that he served both tenants with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 2, 2015 ("10 Day Notice"), on the same date, by way of posting it to their rental unit door. In accordance with sections

88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 10 Day Notice on November 5, 2015, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include all unpaid rent to date, totalling \$3,000.00, including for December 2015 and January 2016. The landlord indicated the above total amount in his application and confirmed that he served both tenants with this amended application amount. Further, the tenants are aware that rent is due on the first day of each month as per their tenancy agreement. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier, for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claims for increased rent, despite the fact that they did not attend this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to correct the spelling of the female tenant's name, as the landlord inadvertently misspelled it on his Application.

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 retain 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

The landlord testified that this month-to-month tenancy began on August 1, 2015. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord testified that the tenants continue to reside in the rental unit, as he saw them there on the day before this hearing. The landlord provided a copy of the written tenancy agreement for this hearing.

The landlord issued a 10 Day Notice for unpaid rent in November 2015, indicating that rent in the amount of \$1,000.00 was due on November 1, 2015. The notice indicates an effective move-out date November 11, 2015.

The landlord seeks a monetary order of \$3,000.00 for unpaid rent from November 2015 to January 2016 inclusive. The landlord claimed that the tenants did not pay any rent for the above three months. The landlord is also seeking to recover the \$50.00 filing fee 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 November 1, 2015, within five days of being deemed to have received the 10 Day Notice. 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 November 15, 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 November 15, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or 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 tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent totalling \$2,000.00 from November to December 2015. Therefore, I find that the landlord is entitled to \$2,000.00 in rental arrears for the above period.

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 or 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 and show efforts to minimize that 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 for January 2016.

The tenants were required to vacate the rental unit by November 15, 2015, the corrected effective date on the 10 Day Notice. As per the landlord's evidence, the tenants continue to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$1,000.00 was due on January 1, 2016. Therefore, I find that the landlord is entitled to \$1,000.00 in rental arrears for the entire month of January 2016, despite the fact that this hearing was held on January 18, 2016. I make this finding because the landlord may have to serve the tenants with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and possibly advertise and attempt to re-rent the unit.

The landlord continues to hold the tenants' security deposit of \$500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$500.00 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 the landlord 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 \$2,550.00 against the tenants as follows:

Item	Amount
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Unpaid November 2015 Rent	\$1,000.00
Unpaid December 2015 Rent	1,000.00
Loss of January 2016 Rent	1,000.00
Less Security Deposit	-500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Award	\$2,550.00

The landlord is provided with a monetary order in the amount of \$2,550.00 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: January 18, 2016

Residential Tenancy Branch

