



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF, MT, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied 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;
- authorization to retain all or a portion of the tenant's 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 tenant pursuant to section 72.

The tenant applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The landlord confirmed receipt of the tenants' notice of hearing package. The tenants did not submit any documentary evidence. The tenants confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. I accept the evidence of both parties and find pursuant to section 88 and 89 of the Act that both parties have been properly served with the notice of hearing package(s) and the submitted documentary evidence.

Preliminary Issue

The tenant stated that he was unsure of why the “MT” selection was made on the application and is unable to provide any details. As such, this portion of the tenants’ application is dismissed.

It was clarified with both parties that the landlord’s application for liquidated damages is premature as the tenancy has not yet ended. As such, this portion of the landlord’s application is dismissed with leave to reapply.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Are the tenants entitled to an order cancelling the 10 Day Notice?
- Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?
- Is the landlord entitled to retain all or part of the security deposit?
- Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the landlord’s claim and the tenants’ cross claim and my findings are set out below.

This tenancy began on August 1, 2015 on a fixed term tenancy ending on July 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated July 9, 2015. The monthly rent is \$1,675.00 payable on the 1st day of each month and a security deposit of \$825.00 was paid on July 15, 2015.

The landlord stated that the tenants were served with the 10 Day Notice dated January 11, 2016 in person on January 11, 2016. The 10 Day Notice states that the tenants failed to pay rent of \$1,675.00 that was due on January 1, 2016 and displays an effective end of tenancy date of January 22, 2016. The tenant, J.G. confirmed receipt of the 10 Day Notice in this manner.

The landlord stated that since this notice was served no rent has been paid for January and February. The tenant, J.G. confirmed in his direct testimony that because of personal issues rent for January and February has not been paid.

The landlord seeks a total monetary claim of \$3,360.00 which consists of:

\$1,675.00	Unpaid Rent January
\$1,675.00	Unpaid Rent February
\$10.00	Overdraft charges due to the tenants' nonpayment of rent.
3,360.00	Total

The landlord has submitted a copy of her bank statement showing that two \$5.00 overdraft payments were charged to her account.

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 landlord testified that the tenant failed to pay rent for January and February. The tenant admits that no rent has been paid for January and February.

As the tenant has failed to pay the rent in full when due, I find that the 10 Day Notice issued January 11, 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on January 22, 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admits that he has not paid January and February rent. I find that the landlord is entitled to this amount. The landlord has established a monetary claim of \$3,350.00 for rental arrears.

On the landlord's request for recovery of \$10.00 in overdraft charges, I find that the landlord has failed to establish a claim. Although the tenants failed to pay rent, it is not the tenants' responsibility to maintain a balance in her account so that the landlord does not incur an overdraft charge. This portion of the landlord's claim is dismissed.

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the \$825.00 security deposit 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 this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,625.00 under the following terms:

Item	Amount
Unpaid January Rent	\$1,675.00
Unpaid February Rent	1,675.00
Offset Security Deposit	-825.00
Recover Filing Fee	100.00
Total Monetary Order	\$2,625.00

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 17, 2016

Residential Tenancy Branch

