



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, FF, CNC

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

These tenants' applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package submitted by the other party and the submitted documentary evidence. As both parties have attended and have confirmed receipt of the notice of hearing package(s) and the submitted documentary evidence, I am satisfied that both parties have been properly served as per sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for cause?

Are the landlords entitled to a monetary order for unpaid rent, for damage to the rental premises and recovery of the filing fee?

Are the tenants entitled to an order cancelling the 1 Month Notice?

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 tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on August 1, 2015 on a fixed term tenancy ending on July 31, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,200.00 payable on the 1st day of each month and a security deposit of \$600.00 was paid on June 23, 2015.

On February 2, 2016, the landlord served the tenant with the 1 Month Notice dated February 2, 2016 via Canada Post Registered Mail. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent.

The landlord has provided a copy of the Canada Post Registered Mail Customer Receipt Tracking number as confirmation of service in this manner. The tenant has confirmed that the 1 Month Notice dated February 2, 2016 was served in this manner.

The landlord has stated that the tenant has been repeatedly late paying rent and specifically stated:

August 2, 2015	Paid \$650.00 August 2015 Rent
August 4, 2015	Paid \$350.00 August 2015 Rent
September 4, 2015	Paid \$1,000.00 September 2015 Rent
September 5, 2015	Paid \$200.00 September 2015 Rent
October 3, 2015	Paid \$1,200.00 October 2015 Rent
November 1, 2015	Paid \$1,050.00 November 2015 Rent
January 2, 2016	Paid \$1,200.00 January 2016 Rent

The landlord relies upon 8 pages of email exchanges in which the tenant has paid via etransfer. The emails note all of the above noted dates of when the etransfers were made.

The tenant stated that possession of the rental unit did not take place until August 2, 2015 since the rental premises were not yet ready for them to move in. The landlord disputed this claim stating that the tenants could have moved in as early as July 27, 2015. The tenant confirmed that the landlord offered possession of the rental unit as early as July 27, 2015.

Both parties agreed that rent was paid via etransfer as noted above in the landlords' claims. Both parties agreed that an agreement was made for the tenant to replace the dryer with a used one for \$150.00 and that upon the landlord being provided with a receipt for the purchase that the tenant may withhold \$150.00 for November 2015 rent. The landlord stated that no such receipt has been received from the tenants. The tenant confirmed that no receipt was provided to the landlord as the landlord would not pay for postage.

The landlord also seeks recovery of \$666.75 for repair to the back door. Both parties confirmed that the back door was damaged sometime after the start of the tenancy. The landlord stated that the tenant reported that the door was damaged due to a break-in, but has refused to file a report with the police for the break-in. The tenant stated that the door could have been damaged by the wind or that it was jimmied and was poorly built. The tenant has stated that he has pictures of the door which would easily provide proof to support his claim, but has not provided any photographs. The landlord disputed the tenants' claims. The tenant also stated that the person who fixed the door could also provide evidence to support his claims, but has not provided that person as a witness or obtained a witness statement.

Analysis

Section 47(1) (b) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has been repeatedly late paying rent.

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The landlord provided undisputed affirmed evidence that the tenants were served with the 1 Month Notice dated February 2, 2016 via Canada Post Registered Mail. The tenant confirmed in his direct testimony that service was received in this manner.

I accept the undisputed evidence of both parties and find that the landlord has provided evidence that the tenant was repeatedly late paying rent on at least 4 occasions. The tenant had confirmed that rent was paid late for September 2015, October 2015, November 2015 and again for January 2016 as noted in the landlord's evidence. The remaining two months of late rent payments for August 2015 and February 2016 are in dispute.

Section 38 of the Residential Tenancy Branch Policy Guideline speaks to repeated late payment of rent and states,

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late...

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

On this basis, I accept the undisputed evidence of both parties and find that the landlord has provided sufficient evidence that the tenants have been repeatedly late paying rent on at least 4 occasions as admitted by the tenant. The 1 Month Notice dated February 2, 2016 is upheld. The tenant's application to cancel the 1 Month Notice is dismissed. As the effective end of tenancy date has passed, the landlord is granted an order of possession effective 2 days after service upon the tenants.

As for the landlord's monetary claim, I find on a balance of probabilities that the landlord has established a claim for damages and compensation. Both parties confirmed that an agreement was made in which the tenant would replace the dryer for \$150.00. Both parties agreed that the tenants may withhold the \$150.00 from November 2015 rent once the landlord was provided with a copy of the receipt for the \$150.00 purchase of the used dryer. The tenant confirmed that he has not provided a copy of the receipt to

the landlord. I grant the landlords' claim for recovery of \$150.00 for unpaid rent for November 2015.

I also find that the landlord has established a claim for \$666.75 for repairs to the back door of the rental premises. Both parties have confirmed that damage to the door occurred after the tenancy began. The landlord has provided a copy of an invoice for the repairs to the back door for \$666.75. The tenant has provided unsupported claims that the back door was damaged by the wind blowing it and/or that the door was jimmied causing a gap. The tenant has clarified that he believed that the door was poorly installed and that an attempt of a break-in was made. The landlord has stated that the tenant has refused to file a report to the police of the break-in and believes because of this that the damage was caused by the tenant. On this basis, I find that the landlord has established a claim that the back door was damaged by the tenants. I grant the landlords claim for recovery of the \$666.75.

The landlord having been successful in also entitled to recovery of the \$100.00 filing fee.

The landlord testified that she continued to hold the tenants' \$6000.00 security deposit, plus interest, paid on June 23, 2015. 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 landlords to retain the security deposit in partial satisfaction of the monetary award.

Conclusion

The landlord is granted an order of possession.

I issue a monetary order in the landlord's favour in the amount of \$316.75 under the following terms:

Item	Amount
November rent arrears/used dryer purchase	\$150.00
Damages-back door	666.75
Filing Fee	100.00
Offset Security Deposit	-600.00
Total Monetary Order	\$316.75

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: April 06, 2016

Residential Tenancy Branch