



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MND 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; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:36 am in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord testified that he personally served both tenants with the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on February 21, 2016. I find, based on the landlord's undisputed testimony that the tenants were sufficiently served with the 10 Day. The landlord testified that he served both tenants with his Application for Dispute Resolution with Notice of Hearing and evidence by registered mail on March 12, 2016. The landlord submitted receipts and Canada Post tracking information with respect to two registered mail packages, one to each tenant. Based on this evidence, I find that the tenants were deemed served with the landlord's Application for Dispute Resolution on March 17, 2016, 5 days after the registered mailings.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and to retain the tenants' security deposit towards any monetary order?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on November 1, 2014 as a one year fixed term tenancy. After one year, the tenancy continued on a month to month basis with a rental amount of \$950.00. The landlord testified that he continues to hold a security deposit in the amount of \$475.00 paid by the tenants on November 1, 2014.

The landlord applied for an Order of Possession for unpaid rent. The landlord issued a 10 Day Notice on February 21, 2016 with respect to the unpaid February 2016 rent. The landlord testified that, prior to the issuance of the 10 Day Notice the tenants regularly paid their rent late. The landlord testified that the tenant did not pay the February 2016 rent after receiving the 10 Day Notice. The landlord testified that, after the issuance of the 10 Day Notice, the tenants have not paid any monthly rent. The landlord testified that the tenants continue to reside in the rental unit.

The landlord also sought a monetary award of \$4350.00. The landlord sought to recover unpaid rent for the months of February, March, April and May 2016 for \$3800.00. The landlord also sought to recover the \$100.00 filing fee for this application.

On April 5, 2016, the landlord amended his application and sought to recover approximately \$5000.00 for emotional stress; \$8000.00 - \$10000.00 for damages to the rental unit; and rental loss for June 2016 in the amount of \$950.00. The landlord withdrew his application with respect to potential rental loss, damage to the rental unit and emotional stress indicating that he would revisit this portion of his application after the end of this tenancy.

Analysis

Based on the undisputed testimony of the landlord and supporting documentary evidence, the tenants failed to pay the February 2016 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice, March 2, 2016. The tenants were required to vacate the premises by this date. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent for the months of February, March, April and May 2016 totaling \$3800.00. I accept the undisputed testimony of the landlord that the tenants have not paid rent for these four months. I further accept the testimony and submissions of the landlord that he will be unable to require the tenants to vacate prior to the end of April and, further that he will be unable to immediately re-rent the unit. I accept his testimony detailing damage within the unit that he believes he will be required to repair at his own cost after the end of this tenancy, including nail holes, wall damage, broken appliances and other damage.

The landlord testified that he continues to hold a security deposit of \$475.00 plus any interest from November 1, 2014 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

The landlord is entitled to a monetary order as follows,

Item	Amount
Unpaid Rent: \$950 x 4 (February, March, April, May)	\$3800.00
Less Security Deposit	-475.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3425.00

Conclusion

The landlord withdrew his application for a monetary award with respect to damage and June 2016 rental loss.

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord in the amount of \$3425.00.

The landlord is 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: April 22, 2016

Residential Tenancy Branch