



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to obtain an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenants' security deposit and pet damage deposit, and to recover the cost of the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing"), Application for Dispute Resolution (the "Application") and documentary evidence were considered. The landlord testified that the Notice of Hearing, Application and documentary evidence were each served on the tenants by separate registered mail packages on March 18, 2016. The landlord provided two registered mail tracking numbers in evidence which have been included on the cover page of this decision for ease of reference. The landlord testified that both registered mail packages were confirmed as received on March 23, 2016 according to the online registered mail tracking website. In addition, this information was also confirmed during the hearing via the registered mail tracking website. Based on the above, I find the tenants were duly served with the Notice of Hearing, Application and documentary evidence on March 23, 2016, the date they were signed for and accepted by registered mail.

Preliminary and Procedural Matter

Prior to by way of an amendment to the landlord's Application and during the hearing, the landlord requested to include the loss of April 2016 rent in the amount of \$1,300.00 as the tenants continue to occupy the rental unit and have not paid rent for March or April of 2016. The amendment was permitted pursuant to section 64(3(c) of the *Act* as I find that it is reasonable for the tenants to know that rent is payable on the day it is due in accordance with the tenancy agreement. As a result, the landlord's total monetary claim is for \$3,072.76 which is comprised of \$382.76 for unpaid utilities, \$1,300.00 in unpaid March 2016 rent, \$1,300.00 for loss of April 2016 rent, \$90.00 for unpaid March utilities, plus the recovery of the \$100.00 filing fee and less a \$100.00 utility deposit paid by the tenants during the tenancy.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2015. Monthly rent in the amount of \$1,300.00 is due on the first day of each month. The tenants paid a security deposit of \$650.00 and a pet damage deposit of \$10.00, for a combined total of deposits in the amount of \$660.00 at the start of the tenancy, which the landlord continues to hold. The landlord noted that while the pet damage deposit was supposed to be \$350.00, the tenants were unable to pay that amount due to financial difficulties so the total amount of the combined deposits paid by the tenants was \$660.00.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities (the "10 Day Notice") dated February 23, 2016, by personal service on tenant C.K. on February 23, 2016. The 10 Day Notice included an effective vacancy date of March 4, 2016 and indicated that \$385.05 in unpaid utilities was owed. The tenants did not dispute the 10 Day Notice and did not pay the amount indicated as owing within five days of receiving the 10 Day Notice.

The landlord testified that that the tenants have failed to pay the following:

1. \$382.76 which was reduced from \$385.05 due to an adding error on the part of the landlord
2. \$1,300.00 for unpaid March 2016 rent
3. \$1,300.00 for April 2016 rent resulting in a loss of rent for the landlord
4. \$90.00 for unpaid gas utilities for the month of March 2016

The landlord confirmed that the tenants did pay a \$100.00 deposit for their utilities which will be deducted from any amount granted to the landlord.

The landlord submitted the tenancy agreement, 10 Day Notice, utility bills, and tenancy agreement addendums and utility deposit agreement in evidence. The landlord testified that although the utility deposit was supposed to be \$200.00, the tenants only paid \$100.00 due to financial difficulties.

Analysis

Based on the undisputed documentary evidence and oral testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants failed to pay the full amount of utilities owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the Notice is listed as March 4, 2016. I find the tenants are conclusively presumed pursuant to section 46 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was March 4, 2016. The tenants continue to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants.

Claim for unpaid utilities, rent and loss of rent – As the tenants were served and did not attend the hearing, I find the Application of the landlord to be unopposed by the tenants. The landlord testified that \$3,072.76 in unpaid utilities, rent arrears and loss of rent is owed by the tenants as of the date of the hearing. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,072.76** comprised of unpaid rent and utilities, and loss of rent.

The landlord is holding a security deposit of \$650.00 and a pet damage deposit of \$10.00 which was paid by the tenants at the start of the tenancy and has accrued no interest since the start of the tenancy.

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**. However, I offset that amount by applying the **\$100.00** utility credit paid by the tenants as indicated by the landlord during the hearing.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit and pet damage deposit plus interest as follows:

ITEM DESCRIPTION	AMOUNT
1. Unpaid utilities not including March 2016	\$382.76
2. Unpaid utilities for March 2016	\$90.00
3. Unpaid rent for March 2016	\$1,300.00
4. Loss of rent for April 2016	\$1,300.00
5. Filing fee	\$100.00
Subtotal	\$3,172.76
<i>(Less tenants' security deposit of \$650.00 and pet damage deposit of \$10.00 including \$0.00 interest)</i>	<i>-(\$660.00)</i>
<i>(Less \$100.00 utility deposit from tenants held by landlord)</i>	<i>-(\$100.00)</i>
TOTAL BALANCE OWING BY TENANTS TO LANDLORD	\$2,412.76

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$3,172.76 as indicated above. The landlord is authorized to retain the tenants' full security deposit of \$650.00 and pet damage deposit of \$10.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$2,412.76. This order must be served on the

tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 27, 2016

Residential Tenancy Branch