



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPB, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to applications by both parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenant requested:

- cancellation of the landlord’s 10 Day Notices to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) pursuant to section 46 of the *Act*;

The application from the corporate landlord and landlord JM (the “landlord”), requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for money owed for damage or loss under the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant, the landlord, JM, and the building manager, JP, participated in the conference call hearing. They were all given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice was placed under the tenant’s door on December 2, 2016. While not a recognized form of service under section 88 of the *Act*, the tenant acknowledged receiving the notice. As such, I find the tenant was duly served with the 10 Day Notice pursuant to section 88 of the *Act*.

On December 14, 2016, building manager, JP, found a copy of a Notice to Dispute Resolution Package in the slot of his office where mail is delivered. Pursuant to section 89 of the *Act*, this is not a proper manner of serving an application for dispute resolution. Despite this, property manager, JP, acknowledged receipt of the tenant’s Notice to Dispute Resolution Package. Under these circumstances and in accordance with

paragraph 71(2)(c) of the *Act*, I find that the landlord was duly served with the tenant's application for dispute resolution.

On December 21, 2016, building manager, JP, hand delivered the tenant a copy of the Landlord's application for Dispute Resolution Package. This application included an application for an Order of Possession as well as a Monetary Order for \$2,500.00 for unpaid rent. Pursuant to section 89 of the *Act*, I find that the tenant has been served with this application on December 21, 2016.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the landlords entitled to a Monetary Order for unpaid rent and for money owed for damage or loss under the *Act*?

Can the landlords keep all or part of the security deposit to apply against their monetary claim?

Are the landlords entitled to an order for the tenant to pay them back the cost of the filing fee?

Background and Evidence

Testimony and a copy of the Residential Tenancy Agreement provided by the landlord demonstrate that the tenancy in question began on October 10, 2016. Monthly rent was \$1,250.00 and a security deposit of \$625.00 was collected at the outset of the hearing and continues to be held by the landlords.

The landlord stated that a 10 Day Notice was issued for non-payment of December 2016 rent. The tenant maintained that he attempted to pay the December 2016 rent "four or five days later" but that it was refused by the building manager.

The building manager, JP, explained that on one of the "last few days" of October 2016, the tenant had asked him how he was to pay the rent. JP testified that he told the tenant he could not accept any rent money and the tenant was directed to the main rental office in downtown Vancouver. The landlord stated that it was the policy of the commercial landlords to have all rent paid at the central office on the 1st of the month by all tenants who resided in their property. The landlord testified that at the central office, payments were made by cheque, and debit. The landlord continued by noting that

residential managers do not take money. JP provided testimony that he never accepted any forms of rent from any tenants.

The tenant explained that he arrived at the corporate landlord's main office on December 4, 2016 to pay the rent but was prevented from doing so by a staff member who told him it was "too late." The tenant continued by explaining that he attended the office with a cheque and was turned away because it was "the wrong type of cheque" forcing him to leave the main office and go to the bank in an attempt to regulate his financial situation.

The landlord disagreed with this version of events and stated that December 4, 2016 was a Sunday and the office would have therefore been closed. The landlord explained that he has a note in his diary that says the tenant arrived on December 16, 2016. The tenant disputes this date and maintains that he is "100% sure it was December 5, 2016." The landlord continued that he agreed that the tenant did attend the downtown office of the real estate company and that he did present a cheque which was declined, however; he stated that the tenant informed that he would be leaving the office to go to the bank to correct the banking situation and would immediately return to the real estate office with the proper form of payment. The landlord and tenant both acknowledged that the tenant did not return to the office that day.

Analysis – Order of Possession

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord stated that the tenant owe \$1,250.00 for unpaid rent for December 2016 and January 2017. The tenant acknowledged under oath that they did not pay rent on the day on which it is due. Furthermore, the landlord provided convincing testimony from the building manager that the tenant was fully aware of the manner in which rent was to be paid. As such, the landlords' 10 Day Notice stands. Pursuant to section 55 of the *Act*, **I find that the landlords are entitled to a 2 day Order of Possession.** The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Order

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/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. In this case, the onus is on the landlord to prove their entitlement to their claim for a monetary award.

The landlords sought a monetary order of \$1,250.00, which was the amount in unpaid December 2016 and January 2017 rent. The landlord has also applied pursuant to section 38 of the *Act* to keep all of the security deposit as a relief against monies owed.

Specifically the landlords are seeking:

| Item | Amount |
|----------------------------------|-------------------|
| Rental Arrears for December 2016 | \$1,250.00 |
| Rental Arrears for January 2017 | 1,250.00 |
| Recovery of Filing Fee | 100.00 |
| Less Security Deposit | (-625.00) |
| | |
| Total Monetary Award | \$1,975.00 |

Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's \$625.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Pursuant to section 67 of the *Act*, **I find that the landlords are entitled to receive a monetary order for unpaid rent for \$1,975.00.** Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

Conclusion

I am making a Monetary Order of \$1,975.00 in favour of the landlords as follows:

| Item | Amount |
|----------------------------------|------------|
| Rental Arrears for December 2016 | \$1,250.00 |
| Rental Arrears for January 2017 | 1,250.00 |
| Recovery of Filing Fee | 100.00 |

| | |
|-----------------------------|-------------------|
| Less Security Deposit | (-625.00) |
| | |
| Total Monetary Award | \$1,975.00 |

The landlords are provided with formal Orders in the above terms. Should the tenant 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: January 23, 2017

Residential Tenancy Branch