



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlords' application for:

- an Order of Possession, pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order, pursuant to section 67 of the *Act* for unpaid rent; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

While the landlords, represented by agent, SA ("the landlord"), attended the hearing by way of conference call, the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was posted on the door of the rental unit on November 24, 2016. I find that in accordance with section 88 of the *Act* the 1 Month Notice was deemed to be served to the tenant on November 27, 2016.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was mailed to the tenant by way of Registered Mail on December 6, 2016. The Canada Post tracking number was provided to the hearing. I find that in accordance with section 88 and 90 of the *Act* the 10 Day Notice was deemed served to the tenant on December 11, 2016.

The landlord testified that the tenant was sent the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") by Registered Mail on November 24, 2016. In accordance with section 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's dispute resolution hearing package on November 29, 2016.

At the outset of the hearing the landlord informed that the tenant had vacated the property on January 7, 2016 and that they wished to withdraw their Notices to End Tenancy.

An Amendment to an Application for Dispute Resolution (“the Amendment”) was sent to the tenant by way of Registered mail on December 20, 2016 to include a Monetary Order for \$1,800.00. Pursuant to section 88 and 90 of the *Act*, I find that the tenant was deemed served with the Amendment on December 25, 2016.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for unpaid rent?

Are the landlords entitled to a recovery of the filing fee from the tenant?

Background and Evidence

The landlord gave evidence and provided a copy of the tenancy agreement that the tenancy in question began on June 1, 2015. This was a fixed term lease, set to end on January 31, 2016. Following this date, the tenancy continued as a month to month tenancy. Rent was set at \$900.00 per month and a security deposit of \$450.00 continues to be held by the landlord.

The landlords have applied for an Order of Possession pursuant to section 55 of the *Act* and a Monetary Order for non-payment of rent for the months of December 2016 and January 2017 pursuant to section 67 of the *Act*. The landlord is seeking a Money Order of \$1,800.00 to recover monies owed from non-payment of rent for the following months.

Item	Amount
Unpaid rent for December 2016	\$900.00
Unpaid rent for January 2017	900.00
Total =	\$1,800.00

In addition, the landlords have applied, pursuant to section 72 of the *Act* to recover the filing fee from the tenant.

Analysis – Monetary Order

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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.

The landlord provided testimony and written evidence was submitted with the hearing package demonstrating that rent was not paid for December 2016. In accordance with sections 7(1) and 67 of the *Act*, I find that the landlords are entitled to a monetary award of \$900.00 for unpaid rent owing for December 2016.

Section 58(3) of the *Act* allows a landlord to obtain compensation for losses incurred as a result of a tenant's overholding of a rental unit after the effective date of a notice to end tenancy. In this case, the landlord explained that the tenant vacated the rental unit on January 7, 2017. The landlord stated that the tenant "left in the middle of the night. Most likely a runner." When asked to expand upon this, the landlord explained that the tenant abandoned the rental unit without any notice in the middle of the evening.

Due to the unexpected manner in which the tenant vacated the rental unit, the landlords are therefore entitled to rent for the month of January 2017. The tenant was overholding in the rental unit and left without any explanation, or notice, thus leaving the landlords in the precarious position of having to prepare the suite on an unknown timeline. The landlords will be granted compensation reflected in the Monetary Order, pursuant to section 58(3) of the *Act* for the time that the tenant overheld in the suite plus the remainder of January 2017, as I find unlikely that the landlord will be able to locate a new tenant during the remainder of this month.

Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's \$450.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in their application, they are entitled to recover the \$100.00 filing fee from the tenant pursuant to section 72 of the *Act*.

Conclusion

I am making a Monetary Order pursuant to section 67 of the *Act* for \$1,450.00 in favour of the landlords as follows:

Item	Amount
Rental Arrears for December 2016	\$900.00
Overholding for January 2017	900.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-\$450.00)
Total Monetary Award	\$1,450.00

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 24, 2017

Residential Tenancy Branch