



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR and 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; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Both the landlords and the tenants attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the front door of the rental unit on November 19, 2016. The tenants acknowledged receiving this notice.

The landlords testified that the tenants were mailed the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") by Registered Mail on December 2, 2016. The tenants acknowledged receipt of this package.

In accordance with section 88 and 89 of the *Act*, I find that the tenants were correctly served with both the 10 Day Notice and the dispute resolution hearing package.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

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

Background and Evidence

The landlords gave testimony that the tenancy agreement in question began on October 15, 2015. This was a month to month tenancy, rent was set at \$1,900.00 per month and a security deposit of \$950.00 continues to be held by the landlords.

The landlords have applied for an Order of Possession and a Monetary Order for unpaid partial rent for the month of November 2016 and unpaid rent for the months of December 2016 and January 2017. The tenants acknowledged that rent has not been paid for these months. The tenants stated that they share the rental property with two other persons not named on the lease agreement and that it was in fact these other occupants who have not been able to produce the required rent.

The landlords are seeking a Monetary Order of \$4,433.00 to recover monies owed for non-payment of rent for these months, as well as a recovery of the cost of their filing fee. Specifically, the landlords requested a monetary award for the following:

Item	Amount
Partial unpaid rent for November 2016	\$633.00
Unpaid rent for December 2016	1,900.00
Unpaid rent for January 2017	1,900.00
Filing Fee	100.00
Total =	\$4,533.00

Analysis – Order of Possession

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made an 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 has led to the end of their tenancy on the effective date of the notice. In this case, this

required the tenants to vacate the premises by December 1, 2016. As that has not occurred, 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 tenants. If the tenants do 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 landlords to prove their entitlement to their claim for a monetary award.

Pursuant to section 67 of the *Act*, I find that the landlords are entitled to a Monetary Order of \$3,583.00 for unpaid rent. The landlords testified that rent has not been paid in its entirety for November 2016, and that it remains outstanding for December 2016 and January 2017. The tenants acknowledged that this rent remained unpaid.

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 landlord to retain the tenants' \$950.00 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 a recovery of the filing fee from the tenants' pursuant to section 72 of the *Act*.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant.

I make a Monetary Order of \$3,583.00 in favour of the landlords as follows:

Item	Amount
Partial unpaid rent for November 2016	\$633.00
Unpaid rent for December 2016	1900.00
Unpaid rent for January 2017	1900.00
Filing Fee	100.00
Retention of Security Deposit	(-950.00)
Total =	\$3,583.00

The landlords are provided with formal Orders in the above terms. Should the tenants 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 13, 2017

Residential Tenancy Branch