



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNR MNSD OPR

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 for damage to the rental unit;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72 of the *Act*; and
- a Monetary Order pursuant to section 72 of the *Act* to retain the security deposit to apply against their monetary claim.

While the landlords attended the hearing by way of conference call, AF ("the tenant") did not. The landlords attending the hearing 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 personally served to the tenant on November 20, 2016. I find that in accordance with section 88 of the *Act* the 10 Day Notice was served to the tenant on November 20, 2016. A copy of the 10 Day Notice was provided to the hearing as part of the landlords' evidence package.

The landlords testified that on December 9, 2016 the tenant was sent by way of Registered Mail the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package"). The Canada Post tracking number was provided as evidence during the hearing. In accordance with section 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' dispute resolution hearing package on December 14, 2016.

The landlords testified that they contacted Canada Post on January 3, 2016 and were informed that the dispute resolution hearing package they had mailed was not collected.

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?

Are the landlords entitled to a Monetary Order for damage to the unit, site or property?

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

The landlords gave evidence that the tenancy in question began “approximately three years ago.” This was a month to month tenancy; rent was set at \$2,800.00 per month and a security deposit of \$1,400.00 continues to be held by the landlords. The landlords explained that the tenant was an “absentee” tenant who often travelled for business. The landlords provided undisputed testimony that the tenant had not paid rent from January 2016 through to August 2016. The landlords stated that prior to January 2016 “rent had been paid but not regularly” and that the landlords and tenant constantly had to “work things out.” The landlords explained that the tenant would often evade their attempts to contact him by stating that he was out of the country on business and that they were to direct their inquiries to his son. The landlords said that upon receipt of the 10 Day Notice, the tenant became very irate.

The landlords have applied for an Order of Possession and a Monetary Order for non-payment of rent and utilities. The landlords are seeking a Money Order of \$4,206.05 to recover monies owed for non-payment of November 2016 rent and quarterly utilities ending on September 30, 2016. Furthermore, the landlords are looking to recover the filing fee for this application from the tenants.

Item	Amount
Unpaid rent for November 2016	\$2,800.00
Unpaid utilities for July 1 – September 30, 2016	1,406.05
Filing Fee	100.00
Total =	\$4,306.05

The landlord indicated a willingness to forego seeking a monetary award for unpaid rent for the previous months of 2016. They explained there was little hope in recovering the current amount requested in the Monetary Order.

Analysis – Order of Possession

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice. The tenant has 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 tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 30, 2016. As that has not occurred, I find that the landlord is 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.**

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.

I find that the landlords are entitled to a Monetary Order of \$4,306.05 for unpaid rent and utilities. The landlords provided testimony and written evidence was submitted with the hearing package demonstrating that rent was not paid for November 2016 and that the utility bill covering the dates between July 1, 2016 and September 30, 2016 was not paid.

I accept this uncontested evidence offered by the landlords. I am issuing the attached monetary order that includes the landlords' application for \$2,906.05 for unpaid November 2016 rent and utilities.

The landlords explained that they did not anticipate being able to recover any of this money since the tenant would often avoid their calls. The landlords have no desire to pursue rent owed for December 2016 and January 2017.

The landlords' may 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 \$1,400.00 security deposit, plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the two days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order of \$2,062.50 in favour of the landlords as follows:

Item	Amount
Rental Arrears for November 2016	\$2,800.00
Unpaid utilities for July 1, 2016 – September 30, 2016	1,406.05
Filing Fee	100.00
Security Deposit	-\$1,400.00
Total Monetary Award	\$2,906.05

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 17, 2017

Residential Tenancy Branch