



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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 utilities, and money owed for loss under the *Act*;
- an application to keep all or part of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

While the landlords, GL and CN attended the hearing by way of a conference call, the tenant did not. GL ("the landlord") stated at the outset of the hearing that he would be speaking on behalf of CN because she did not have a strong command of the English language. 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 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was posted on the front door of the rental unit on December 7, 2016. I find that in accordance with section 88 of the *Act* the 10 Day Notice was served to the tenant on December 10, 2016.

The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") in person on December 28, 2016. In accordance with section 89 of the *Act*, I find that the tenant was served with the landlords' dispute resolution hearing package on December 28, 2016. A copy of the 10 Day Notice, a Proof of Service worksheet and a Monetary Order Worksheet were all provided to the hearing in the Landlord's Application for Dispute Resolution ("Landlord's Application").

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 recover the filing fee from the tenant?

Are the landlords entitled to apply the security deposit against the Monetary Order?

Background and Evidence

The landlord gave evidence that the tenancy agreement in question began on October 15, 2016. This was a month to month tenancy, rent was set at \$800.00 per month and a security deposit of \$400.00 continues to be held by the landlord.

The landlords have applied for an Order of Possession and a Monetary Order for non-payment of rent for the months of November and December 2016, as well as January 2017. In addition, the tenant has failed to pay utilities for December 2016. The landlords are seeking a Money Order of \$1,347.00 to recover monies owed from non-payment of rent for these months, as well as unpaid utilities for December 2016.

Analysis – Order of Possession

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. 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 her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 17, 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 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

I accept this uncontested evidence offered by the landlord. The landlords have applied for a monetary order in the amount of \$1,347.00 for unpaid rent and utilities:

| Item | Amount |
|------------------------------------|------------|
| Unpaid rent for November 2016 | \$260.00 |
| Unpaid rent for December 2016 | 165.00 |
| Unpaid utilities for December 2016 | 122.00 |
| Unpaid rent for January 2017 | 800.00 |
| | |
| Total = | \$1,347.00 |

Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenant's \$400.00 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 may recover the \$100.00 filing fee from the tenant.

Conclusion

I am granting the landlords an Order of Possession to be effective two days after notice is served to the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I am making a Monetary Order of \$1,047.00 in favour of the landlords as follows:

| Item | Amount |
|------------------------------------|-------------------|
| Unpaid rent for November 2016 | \$260.00 |
| Unpaid rent for December 2016 | 165.00 |
| Unpaid utilities for December 2016 | 122.00 |
| Unpaid rent for January 2017 | 800.00 |
| Recovery of Filing Fee | 100.00 |
| Less Security Deposit | (-400.00) |
| | |
| Total Monetary Award | \$1,047.00 |

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 19, 2017

Residential Tenancy Branch