



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR MNSD OPR

Introduction

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

The application from the corporate 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 the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

Issue(s) to be Decided

The tenants, and the landlord, 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 posted on the tenants’ door on January 3, 2017. The tenants acknowledged receiving the notice. Pursuant to section 88 of the *Act*, I find the tenants were served with the notice on January 6, 2017.

On January 27, 2017, the building manager, sent by Registered Mail, two copies of the of the Landlord’s application for Dispute Resolution Package and evidentiary packages to each of the tenants. A Canada Post tracking number was provided to the hearing. These packages included an application for an Order of Possession as well as a Monetary Order for \$3,180.00 for unpaid rent and parking. The tenants acknowledged receiving these notices.

Background and Evidence

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

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

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

Is the landlord entitled to an order for the tenants to pay back the cost of the filing fee?

Analysis

Testimony and a copy of the Residential Tenancy Agreement provided by the landlord demonstrate that the tenancy in question began on July 1, 2016. Monthly rent was \$1,030.00 and a security deposit of \$515.00 was collected at the outset of the tenancy and continues to be held by the landlord.

The landlord stated that a 10 Day Notice was issued for non-payment of December 2016, January 2017 and February 2017 rent. The landlord is seeking a Monetary Order of \$3,180.00. This includes the cost of the unpaid rent, along with \$90.00 in unpaid parking which was included as part of the tenancy agreement. 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 and for recovery of the filing fee as per section 72 of the *Act*.

Specifically the landlord is seeking:

Item	Amount
Rental Arrears for December 2016	\$1,030.00
Rental Arrears for January 2017	1,030.00
Rental Arrears for February 2017	1,030.00
Parking Arrears for December 2016, January 2017 and February 2017 @ \$30.00/month	90.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-515.00)
Total Monetary Award	\$2,765.00

During the course of the hearing, the tenants acknowledged not paying the rent. The tenants stated that they did not have the money as they were waiting for an inheritance to come due. They explained that they would not have the funds to pay the rent until this money arrived.

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 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 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 January 16, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order

of Possession. The landlord 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 landlord may enforce this Order in the Supreme Court of British Columbia.

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 landlord sought a monetary order of \$3,180.00, which was the amount in unpaid rent for December 2016, January 2017 and February 2017. 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.

The tenants acknowledged not paying rent for this time. They stated that they will not have the ability to pay rent until at least March 2017. As such, the landlord is entitled to the entire sum requested in her Monetary Order.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$515.00 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 landlord is entitled to receive a monetary order for unpaid rent for \$2,765.00.** 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.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenants. 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 \$2,765.00 in favour of the landlord as follows:

Item	Amount
Rental Arrears for December 2016	\$1,030.00
Rental Arrears for January 2017	1,030.00
Rental Arrears for February 2017	1,030.00
Parking Arrears for December 2016, January	90.00

2017 and February 2017 @ \$30.00/month	
Recovery of Filing Fee	100.00
Less Security Deposit	(-515.00)
Total Monetary Award	\$2,765.00

The landlord is 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: February 20, 2017

Residential Tenancy Branch