



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR MNSD OPR CNR ERP LRE OLC PSF RP RR

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act*.

The landlords sought orders as follows:

- An Order of Possession pursuant to section 55 of the *Act*;
- A Monetary Order for unpaid rent and late fees pursuant to section 67 of the *Act*;
- An Order to keep all or part of the Security Deposit as compensation for unpaid rent pursuant to section 72 of the *Act*; and
- To recover the filing fee from the tenant for the cost of this application pursuant to section 72 of the *Act*.

The tenant sought orders as follows:

- Cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) pursuant to section 46 of the *Act*;
- An Order for the landlords to make emergency repairs to the unit pursuant to section 33 of the *Act*;
- An Order to suspend or set condition's on the landlords right to enter the rental unit pursuant to section 70 of the *Act*;
- An Order to have the landlords comply with section 62 of the *Act*;
- An Order for the landlords to provide services or facilities required by the tenancy agreement or law pursuant to section 65 of the *Act*;
- An Order directing the landlords to reduce rent for their failure to provide facilities agreed upon pursuant to section 65 of the *Act*; and
- Authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant explained that she was served in person by the landlords with a 10 Day Notice on January 2, 2017. The tenant stated that she served the landlords in person with her Application for Dispute Resolution on January 15, 2017. The tenant said that she could not offer a reason as to why she waited 13 days to dispute the 10 Day Notice.

On January 16, 2016, the landlords served the tenant by Registered Mail, with their application for dispute resolution. A Canada Post tracking number was provided to the hearing and as part of landlords' evidentiary package.

As both parties confirmed that they had received one another's dispute resolution and evidentiary packages, I find that both parties were duly served these documents in accordance with sections 88 and 89 of the *Act*.

On January 16, 2017 the landlords amended their application for dispute resolution to include a monetary order of \$5,100.00 to reflect anticipated unpaid rent for February 2017 as well as an application to keep the security deposit as compensation for unpaid rent and an order requesting reimbursement for the filing fee. As the tenant also confirmed receipt of the landlord's amended application, I find that she was duly served the amended application in accordance with section 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent? If not, is the tenant entitled to continue the tenancy and have orders made directing the landlords to; comply with the *Act*, reduce the rent, limit the landlords right to enter the suite, provide services agreed upon, and make emergency repairs?

Are the landlords entitled to a monetary order for unpaid rent?

Can the landlords keep the security deposit as compensation for unpaid rent?

Are the landlords or the tenant entitled to recovery of the filing fee?

Background and Evidence

Testimony provided during the hearing by the tenant explained that the tenancy in question began on November 1, 2016. Rent was \$1,700.00 per month and a damage deposit of \$850.00 continues to be held by the landlords. No pet deposit was collected.

The tenant explained that she is one of four people that live on the premises but is the only named tenant on the tenancy agreement.

The tenant stated that she has recently run into financial difficulty and is unable to continue paying the rent. The tenant stated that she paid partial rent of \$500.00 for December 2016 in cash by leaving the money at the landlords' doorstep. The landlord who attended this hearing (the landlord)s denied receiving this and said that he suspected the tenant had gone to the wrong house, based on her description of the doorway area where she purported to have left the money. The tenant confirmed that she was not able to pay rent for January and February 2017.

The landlords are seeking a Money Order of \$5,100.00 to recover monies owed for non-payment of rent for the following months.

Item	Amount
Unpaid rent for December 2016	\$1,700.00
Unpaid rent for January 2017	1,700.00
Unpaid rent for February 2017	1,700.00
Total =	\$5,100.00

Analysis – Order of Possession

The tenant failed to pay the December 2016 rent, along with the rent for January and February 2017, within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application disputing the 10 Day Notice 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 January 13, 2017. 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. The landlords agreed during the course of the hearing to grant the tenant extra time to gather her belongings and agreed to an Order of Possession for February 16, 2017. If the tenant does not vacate the rental unit by 1:00 P.M. on February 16, 2017, the landlords may enforce this Order in the Supreme Court of British Columbia.

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 to the hearing, demonstrating that rent was not paid for December 2016, January 2017 and February 2017. During the course of the hearing, the tenant stated that she placed \$500.00 in an envelope on the front doorstep of the landlords' home as partial payment of her December 2016 rent. The tenant did not provide the hearing with any evidence that this money was withdrawn from her bank account, no witnesses were called to support this assertion and when rent was paid in November 2016 a receipt was given to the tenant. Because of these reasons, I do not accept this testimony as I find it highly unlikely that a tenant would pay this amount of money to a landlord in this way. In accordance with sections 7(1) and 67 of the *Act*, I find that the landlords are entitled to a monetary award of \$5,100.00 for unpaid rent owing for December 2016, January 2017 and February 2017.

The landlords' amended application seeks 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 \$850.00 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

All issues related to the tenant's application for dispute resolution are dismissed.

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 by 1:00 P.M. on February 16, 2017, the landlords may enforce this Order in the Supreme Court of British Columbia.**

I issue a Monetary Order pursuant to section 67 of the *Act* for \$4,350.00 in favour of the landlords as follows:

Item	Amount
Unpaid rent for December 2016	\$1,700.00
Unpaid rent for January 2017	1,700.00
Unpaid rent for February 2017	1,700.00
Recovery of Filing Fee	100.00
Less Security Deposit	(-\$850.00)
Total Monetary Award	\$4,350.00

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: February 10, 2017

Residential Tenancy Branch