



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the landlords withdrew their application for a Monetary Order for money owed or compensation for damage or loss under *Act*, regulations or tenancy agreement.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on January 25, 2017. Canada Post tracking numbers were provided by the landlords in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent?
- Are the landlords entitled to an Order of Possession for cause?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The landlord RS provided testimony on behalf of the landlords and testified that this month to month tenancy started on August 01, 2016. Rent for this unit is \$850.00 per month due on the 1st of each month. The tenants paid a security deposit of \$425.00 on July 31, 2016.

The landlord testified that the tenants failed to pay the rent for January, 2017 leaving an unpaid balance of \$850.00. The landlord testified that the tenants were served with a 10 Day Notice to End Tenancy for unpaid rent (the Notice). The Notice was served in person on January 11, 2017. Proof of service has been provided in documentary evidence. The Notice informed the tenants that they owed rent for January of \$850.00 and that they had five days to either pay the outstanding rent, or apply for Dispute Resolution or the tenancy would end on January 21, 2017.

The landlord testified that since the Notice was served the tenants have also failed to pay rent for February, 2017 and have continued to reside in the rental unit. The total amount of outstanding rent for two months is now \$1,700.00.

The landlords have applied to retain the tenants' security deposits of \$425.00 in partial payment of the rent arrears and seek a Monetary Order for the balance. The landlords have also applied for an Order of Possession to take effect as soon as possible.

The landlord testified that the tenants were also served with a One Month Notice to End Tenancy for cause. This Notice was served in person on December 17, 2016. The Notice has an effective date of January 31, 2017 and gave the following reasons to end the tenancy:

- 1) *The tenant has been repeatedly late paying rent.*
- 2) *The tenant has allowed an unreasonable number of occupants in the unit*
- 3) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) Put the landlord's property at significant risk;*

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's application concerning unpaid rent and an Order of Possession for unpaid rent; I refer the parties to s. 26 of the *Act* which states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed evidence before me that there is outstanding rent for January, 2017 and February, 2017 of \$1,700.00.

I Order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$425.00** in partial payment of the rent arrears. There is no accrued interest on the deposit for the term of the tenancy.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

| | |
|--|-------------------|
| Outstanding rent | \$1,700.00 |
| Filing fee | \$100.00 |
| Less security and pet deposits | (-\$425.00) |
| Total amount due to the landlords | \$1,375.00 |

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been served on January 11, 2017. The tenants did not pay the outstanding rent within five days and the tenants did not apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlords an Order of Possession for two days after service of this Order upon the tenants, pursuant to s. 55 of the *Act*.

As I have granted an Order of Possession based on the 10 Day Notice to End Tenancy for unpaid rent I am not required to deal with the landlord's claim for an Order of Possession for cause.

Conclusion

The landlords have been issued an Order of Possession effective **two (2) days** after service upon the tenants pursuant to section 55(1) of the *Act*. This Order must be

served on the tenants. If the tenants remain in Possession of the rental unit and do not relinquish that possession to the landlords then the Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

For the reasons set out above, I grant the landlords a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,375.00**. This Order must be served on the tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the tenants fail to comply with the Order.

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