



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALEXANDRA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, which lasted approximately 12 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that she served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated December 7, 2016 on the same date by posting on the rental unit door. In accordance with section 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on December 10, 2016, three days after posting.

The landlord testified that she served the landlord's application for dispute resolution package dated January 10, 2017 on the tenants by registered mail. The landlord provided two Canada Post tracking number as evidence of service. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application package on January 15, 2017, five days after mailing.

During the hearing the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord testified that the tenants have failed to pay the February rent and the amount of arrears as of the date of the hearing is \$4,913.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend

the landlords' Application to increase the landlord's monetary claim from \$3,913.00 to \$4,913.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to monetary compensation as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began in September, 2015. The current rent is \$1,000.00 payable on the 1st of the month. A \$500.00 security deposit was paid by the tenants at the start of the tenancy and is held by the landlord. The tenants continue to reside in the rental unit at the time of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$2,913.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenants have not made any payment since November 4, 2016. The landlord testified that the tenants failed to pay rent for December 2016, and January and February 2017. The landlord said that the total amount owing for the tenancy as of February 2, 2017, the date of the hearing is \$4,913.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,000.00. I accept the landlord's evidence that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period. Accordingly, 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 10 Day Notice, December 20, 2016. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$4,913.00. I issue a monetary award in the landlord's favour for unpaid rent of \$4,913.00 as at February 2, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$500.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$4,513.00 under the following terms, which allows the landlord to recover unpaid rent for the months of December, January, February, and the filing fee for their application:

Item	Amount
Rent Arrears December	\$2,913.00
Unpaid Rent January	\$1,000.00
Unpaid Rent February	\$1,000.00
Less Security Deposit	-\$500.00
Filing Fees	\$100.00
Total Monetary Order	\$4,513.00

The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 2, 2017

Residential Tenancy Branch

