



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- an order for possession for unpaid rent;
- a monetary order for unpaid rent;
- an order for possession for cause;
- compensation for damage to the unit;
- to keep all or part of the pet damage deposit or security deposit;
- an order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order for substituted service of documents; and
- recovery of the filing fee for their application from the tenants.

The landlord's claim for an order for possession for cause and her monetary claim were made by way of an Amendment on December 29, 2016.

The landlord appeared at the teleconference hearing and gave affirmed testimony. Tenant "J.R." and Tenant "H.R." (the "Tenants") also appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and tenants were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The landlord withdrew her claim for substituted service of documents.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is

appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the landlord's application I have determined that I will not deal with all the dispute issues the landlord has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the notices to end the tenancy. Therefore, I will deal with the landlord's requests for an order of possession for unpaid rent, a monetary order for unpaid rent, an order for possession for cause and recovery of the filing fee for their application from the tenant. I dismiss the balance of the landlord's application with leave to reapply. I note this decision does not extend any applicable time limits under the *Act*.

The landlord testified that she served both tenants in separate mailings with her initial application by registered mail on December 12, 2016. The tenants acknowledged receipt of the registered mail. The landlord testified that she served the Amendment on the tenants by depositing a copy in the tenants' mailbox on December 28, 2016. The tenants acknowledged that they received a copy.

The landlord did not submit a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") prior to the hearing. The landlord was asked to fax a copy of the 10 Day Notice to the Residential Tenancy Branch by 4:00 p.m. on the day of the hearing. The landlord complied within the requested timeframe.

Issues to Be Decided

- Is the landlord entitled to an order for possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled to an order for possession for cause?
- Is the landlord entitled to recovery of the filing fee for their application from the landlord?

Background and Evidence

The undisputed evidence established that a month to month tenancy started on September 24, 2016 pursuant to a written tenancy agreement signed by the tenants on September 22, 2016. The landlord received a security deposit in the amount of \$725.00 from the tenants on September 23, 2016. The tenancy agreement requires the tenants to pay two thirds (2/3) of the water bill.

According to the tenancy agreement, rent in the amount of \$1,450.00 is due on the first day of each month. The tenant testified that the tenant had an arrangement with the landlord to pay rent in bi-weekly payments. The landlord testified that this was a temporary arrangement and the tenants were notified by text on November 15, 2016 that rent is expected to be due pursuant to the tenancy agreement. The tenants acknowledged having received the landlord's text. The landlord testified that the tenants did not pay their rent and utilities when they came due on December 1, 2016. The landlord testified that the tenant's owe \$80.77 for their share of the water bill.

The landlord served the tenants with a copy of a 10 Day Notice in person by leaving a copy with Tenant H.R. on December 2, 2016. The tenants confirmed these details.

The 10 Day Notice was dated December 2, 2016, with an effective move out date of December 12, 2016. The 10 Day Notice shows an amount of unpaid rent as \$1,450.00 and unpaid utilities in the amount of \$80.77 due December 1, 2016.

The landlord testified that the tenants did not pay rent after receipt of the 10 Day Notice and failed to pay rent in the amount of \$1,450.00 due on January 1, 2017. The landlord requested to amend her application to include all the unpaid rent.

At the hearing the landlord corrected the amount of unpaid for rent for December 1, 2016 by deducting a \$25.00 overpayment that the landlord had forgotten to account for. Accordingly, the landlord's claim for the unpaid rent for December 2016 is \$1,425.00 plus \$80.77 for the water bill. The landlord's claim for January rent is \$1,450.00.

The landlord is seeking an order of possession for unpaid rent and a monetary order for unpaid rent in the amount of \$2,955.77.

The tenants acknowledge that they owe the unpaid rents in the total amount of \$2,955.77.

The landlord is seeking recovery of the tenant's filing fee in the amount of \$100.00.

The landlord is also seeking an order of possession for cause on the basis of a One Month Notice that was served on the tenants on December 28, 2016. I did not need to hear evidence of the One Month Notice once the tenants agreed that they owed the amounts claimed by the landlord in the 10 Day Notice they received.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Based upon the undisputed testimony of the landlord and tenants, I find that the tenants did not pay rent due for December 2016 in the amount of \$1,425.00 nor rent in the amount of \$1,450.00 due for January 2017. I also find that the tenants did not pay the amount of \$80.77 due for their share of the water bill. Accordingly, I find that the landlord is entitled to a monetary award for unpaid rent in the total amount of \$2,955.77.

I allow the landlord's request to amend their application to include the rent for January 2017. I find that the tenants are not prejudiced by the amendment as the tenants knew or ought to have known that rent for January 2017 was required to be paid when it came due.

In accordance with section 88 of the *Act*, I find that the tenants were served with the 10 Day Notice on December 2, 2016. I also find that the 10 Day Notice complies with section 52 of the *Act* and that it is valid.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within five (5) days granted under section 46(4) of the *Act* and that they did not dispute the 10 Day Notice within that five (5) day period.

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 10 Day Notice, December 12, 2016. Accordingly, the landlord is entitled to an order of possession for unpaid rent.

As the tenancy will end on the basis of the landlord's 10 Day Notice, I do not need to address the landlord's One Month Notice. Therefore, I dismiss the landlord's claim for an order of possession for cause.

As the landlord's application is successful, I find that the landlord is entitled to recovery of the \$100.00 filing fee from the tenants.

I authorize the landlord to apply the tenants' security deposit in the amount of \$725.00 against the amounts owed by the tenant.

Based on the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$2,330.77 as follows:

December 2016 Unpaid Rent	\$ 1,425.00
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January 2017 Unpaid Rent	\$ 1,450.00
Utilities (Water)	\$ 80.77
Filing Fee	\$ 100.00
Subtotal	<u>\$ 3,055.77</u>
Less Security Deposit	\$ 725.00
Total Unpaid Rent	\$ 2,330.77

Conclusion

I dismiss the landlord's application for an order of possession for cause as it is unnecessary.

I **dismiss** the landlord's application for compensation for damage to the unit; and for compensation for damage or loss under the *Act*, regulation or tenancy agreement, **with leave to reapply**, as these claims are unrelated to the notices to end tenancy. I note that this does not extend any applicable time limits under the *Act*.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

Pursuant to section 67 of this *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$2,330.77 for unpaid rent, utilities and the filing fee less the tenants' security deposit. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, the Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 07, 2017

Residential Tenancy Branch

