



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ZORO HOLDINGS
ROCKWELL MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlords, dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act"):

- an Order of Possession for unpaid rent pursuant to section 55; and
- a Monetary Order for unpaid rent pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both landlords were represented by their agent AM (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service. The tenant confirmed receipt of both the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 22, 2016 (the "10 Day Notice"), and the Interim Decision of the Residential Tenancy Branch adjourning the Direct Request process to a participatory hearing dated February 2, 2017 (the "Application"). In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served copies of the landlords' Application and evidence.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?
Are the landlords entitled to monetary compensation as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

The parties agreed on the following facts. This month-to-month tenancy began in February, 2015. The current rent is \$1,300.00 payable on the first of each month. A security deposit of \$650.00 was paid by the tenant at the start of the tenancy and is still held by the landlords.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$1,150.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenant subsequently made a payment of \$1,300.00 on January 4, 2017 and a payment of \$1,000.00 on February 2, 2017. The landlord testified that the tenancy remains in arrears by \$1,400.00. The landlord was unable to provide a detailed explanation of how the arrear amount was calculated. The landlord testified that she did not issue any written receipt to the tenant for the payments made in 2017 as receipts are not regularly issued if payments are not made in cash. The landlord stated that the tenant ought to have been aware that the rent remained in arrears even after the partial payments. The landlord said they are seeking only the amount of \$1,150.00.

The tenant testified that he has vacated the rental unit and the tenancy has ended as of February 28, 2017. The tenant agreed that he has not paid the full amount of monthly rent. He agreed with the landlord's figure of \$1,400.00 but argued that he had attempted to enter into an agreement with the landlords to retroactively reduce the rent. The tenant testified that the rental unit had numerous deficiencies. He stated that the landlords' agent at the hearing had never represented herself as having authority to deal with tenancy issues in the past. He had conducted discussions and negotiations with other individuals who he understood to be the authorized representatives of the landlords empowered to deal with tenancy issues. The tenant testified that the other representatives of the landlords were receptive to discussing a rent reduction but no agreement was reached. The tenant said that he intended to reduce the rent arrears for a number of deficiencies including the lack of a refrigerator and adequate heating in the rental unit.

Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$1,300.00. I accept the parties' evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10

Day Notice within that 5 day period. I find that the partial rent payment from the tenant did not reinstate the tenancy.

Accordingly, I find that the tenant is 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, January 4, 2017. Therefore, I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept parties' evidence that there is a rental arrear for this tenancy. The tenant acknowledged that he has not paid the full amount of rent. While the tenant was hopeful that a retroactive rent reduction could be negotiated he testified that no agreement was ever reached forgiving the rent arrear. I issue a monetary award in the landlords' favour for unpaid rent of \$1,150.00, the amount requested by the landlords, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' security deposit of \$650.00 in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenant 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 landlords' favour in the amount of \$500.00 against the tenant on the following terms:

Item	Amount
Unpaid Rent Sought (Dec 2016-Feb 2017)	\$1,150.00
Less Security Deposit	-\$650.00
Total Monetary Order	\$500.00

The tenant must be served with this Order as soon as possible. Should the tenant 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: March 3, 2017

Residential Tenancy Branch