



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNR MNSD OPR

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the corporate landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenant, JD and the landlord participated in the conference call hearing. They were all given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that a 10 Day Notice was handed to the tenant on January 20, 2017. The tenant acknowledged receiving the notice. Pursuant to section 88 of the *Act*, I find the tenant was served with the 10 Day notice on January 20, 2017.

On February 16, 2017, the landlord placed a copy of the Landlord's application for Dispute Resolution Package and Monetary Order in the mailbox of the rental unit. The tenant confirmed receipt of this package but could not recall the exact dates. The tenant is deemed to have been served with the documents on February 19, 2017.

At the outset of the hearing the landlord stated that he wished to amend his Monetary Order from \$7,500.00 to \$10,000.00 to reflect unpaid rent for March 2017. Pursuant to section 64(3)(c), I amend the landlord's Monetary Order to reflect the new amount of outstanding rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order?

Can the landlord recover the filing fee from the tenant?

Can the landlord keep all or part of the pet or security deposit?

Background and Evidence

Testimony was provided by both the landlord and tenant that in September 2016 the landlord entered into what the tenant believed was a tenancy agreement with tenant LA who represented himself as the landlord of this property. Rent was \$2,500.00 per month and no security deposit was collected.

In September 2016 tenant, JD moved into the property. She testified that tenant LA misrepresented himself to her as the landlord. She explained that she paid him a security deposit of \$750.00, a pet deposit of \$750.00 and rent of \$1,500.00 for October 2016. The landlord testified that LA was not an agent or a representative for him; furthermore the landlord confirmed that he did not receive any of the funds that JD paid to LA.

On October 31, 2016 LA abandoned the rental unit leaving JD and other unidentified occupants in the premises. The landlord and JD made a verbal agreement to continue the tenancy and JD paid rent for November 2016.

The tenant acknowledged that since November 2016, rent has gone unpaid from December 2016 to March 2017.

The landlord is seeking an Order of Possession for unpaid rent as well as a Monetary Order for \$10,000.00

Item	Amount
Rental Arrears for December 2016	\$2,500.00
Rental Arrears for January 2017	2,500.00
Rental Arrears for February 2017	2,500.00
Rental Arrears for March 2017	2,500.00
Recovery of Filing Fee	100.00

Total Monetary Award	\$10,100.00

Analysis – Order of Possession

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application 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 30, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia

Monetary Order

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove his entitlement to his claim for a monetary award.

The landlord sought a monetary order of \$10,000.00, which was the amount in unpaid rent for December 2016, and for January to March 2017. The landlord has also applied pursuant to section 38 of the *Act* to keep all of the security deposit as a relief against monies owed.

The tenant acknowledged not paying rent for this time and stated that she will not have the ability to pay rent. The landlord stated that the tenant continued to occupy the rental unit with an unknown number of persons and a pet that he did not have knowledge of. As such, the landlord has requested that his amended Monetary Order reflect rent for the entire month of March 2017. I find it reasonable to award the landlord rent for March 2017 since a variety of unknown factors await him upon possession of the rental unit.

As no security deposit was collected, the landlord cannot claim any amount related to this.

Since the landlord was successful in his application he may recover the \$100.00 filing from the tenant for this application.

Pursuant to section 67 of the *Act*, **I find that the landlord is entitled to receive a monetary order for unpaid rent for \$10,100.00.** 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.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I am making a Monetary Order of \$10,100.00 in favour of the landlord as follows:

Item	Amount
Rental Arrears for December 2016	\$2,500.00
Rental Arrears for January 2017	2,500.00
Rental Arrears for February 2017	2,500.00
Rental Arrears for March 2017	2,500.00
Recovery of Filing Fee	100.00
Total Monetary Award	\$10,100.00

The landlord is 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: March 6, 2017

Residential Tenancy Branch