



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNDC, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

The tenant has applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlords gave the following testimony. Both parties signed a Residential Tenancy Agreement on November 10, 2013. As per that Agreement, monthly rent is set at \$850.00, payable in advance on the first day of each month. The landlord continues to hold the tenants' \$425.00.00 security deposit.

The landlord issued the 10 Day Notice for unpaid rent of \$850.00 owing for February 2017. The landlords testified that the tenant failed to pay the rent for March 2017 as well. The landlords

testified that a partial payment of \$425.00 came from the Ministry. The landlords testified that the partial payment was for use and occupancy only and that the tenancy was not reinstated. The landlords testified that as of today's hearing the amount of unpaid rent is \$1275.00. The landlords dispute the monetary claim made by the tenant. The landlords testified that they "don't know what the tenant is talking about" and that his claim is without merit.

The tenant gave the following testimony. The tenant testified that he has stage four cirrhosis of the liver and that he is making attempts to find supportive housing. The tenant testified that he would like to stay but will leave if he can find a home that can offer medical support for his condition. The tenant testified that the landlord should pay him for all the work he's done on the building and in the suite in the amount of \$4110.00.

Analysis

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 arguments are reproduced here. The principal aspects of each parties claim and my findings around each are set out below.

Firstly, I address the landlords' application and my findings as follows.

The tenant failed to pay their rent in full within five days of being deemed to have received the 10 Day Notice. Although the tenant has filed an application, he does not dispute the amount of unpaid rent and has not provided justification for not paying his rent. The tenant has not provided sufficient evidence to have the notice set aside.

Based on the above facts I find that the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As for the monetary order, based on the evidence provided by the landlords, I am satisfied that the tenant continues to owe the landlords unpaid rent. Although the landlords have not applied to retain the security deposit, using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit of \$425.00 against the \$1275.00 amount of unpaid rent. I issue a monetary award in the landlord's favour in the amount of \$850.00

I address the tenant's monetary claim as follows.

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.

The tenant submits that the landlords owe him \$4110.00 for costs incurred in maintaining the suite and the property. The landlords testified that they adamantly dispute this claim and are unsure as to what the tenant is referring to. The tenant stated that he had witnesses and documentation that could prove his claim; however, the tenant did not submit any of that documentation to the landlords or the Branch for this hearing or have the witnesses participate in the teleconference. The tenant has not provided sufficient evidence to support his monetary claim. Based on the insufficient evidence before me, I hereby dismiss the tenants' monetary claim.

Conclusion

In summary, the landlords have been successful for the following:

Item	Amount
Unpaid Rent Feb and Mar 2017	\$1275.00
Less Deposit	-425.00
Total Monetary Order	\$850.00

The landlord is granted an order of possession and a monetary order for \$850.00. The tenancy is terminated. The landlord may retain the security deposit.

The tenant's application is dismissed in its entirety.

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 30, 2017

Residential Tenancy Branch

