



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent, utilities, and damages pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant RM primarily spoke for both tenants (the "tenant").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the tenants' application for dispute resolution, the landlord's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, the respective applications and their respective evidence.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, 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 parties agreed on the following facts. This month to month tenancy began in September, 2016. The monthly rent is \$800.00 payable on the first. The tenants are also responsible for paying for pay-per-view programs they order on the landlord's television account.

The parties testified that a security deposit was paid at the start of the tenancy but disagreed on the amount. The landlord testified that \$287.00 was paid by the tenants while the tenants testified that \$400.00 was paid. Neither party submitted any written evidence in support of their position on the amount paid.

The landlord testified that the tenants failed to pay any rent for February and March, 2017. The tenants confirmed that they have not paid any rent for those months. The landlord testified that the tenants owe the amount of \$337.94 for pay-per-view programs they ordered. The tenants confirmed that they owe that amount.

The tenant testified that the landlord previously allowed the tenant to do labour in lieu of paying the rent. The tenant testified that he offered the landlord his services as he was unable to pay the rent for February and March but the landlord declined. The tenant testified that the landlord had previously agreed to payment of the utilities in installments and the amount of \$337.94 is not yet due under the agreement.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on or about February 14, 2017, and applied for dispute resolution on February 20, 2017.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The

landlord testified that there is a rent arrear of \$1,600.00. The tenants confirmed that they have not paid rent for February and March, 2017 and agree that they owe that amount. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the evidence of the landlord that there is a rental arrear of \$1,600.00. I accept the evidence of the parties that the tenants were responsible for paying the cost of pay-per-view programs they ordered. I accept the landlord's evidence that the total amount owing for pay-per-view programs is \$337.94. Pursuant to section 67 of the *Act* I issue a monetary award in the landlord's favour for \$1,937.94 that includes the unpaid rent owing of \$1,600.00 for February and March, 2017 and the unpaid pay-per-view bills of \$337.94.

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.

The parties provided contradictory evidence regarding the security deposit. The landlord believes that he only received \$287.00 from the tenants while the tenants testified that \$400.00 was paid. I find, on a balance, that it is more likely that \$400.00 was paid. The copy of the tenancy agreement submitted into evidence indicates that a security deposit of \$400.00 is due at the start of the tenancy. It is reasonable to expect that the landlord would have taken some action if the full amount was not received. The parties testified that the amount paid by the tenants was accepted by the landlord. I find it more likely that the tenants paid the full amount of \$400.00 at the start of the tenancy.

Therefore, in accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit, which I find to be \$400.00, in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I dismiss the tenants' application.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or any occupant 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 under the following terms:

Item	Amount
Rental Arrears for February 2017	\$800.00
Rental Arrears for March 2017	\$800.00
Pay-per-View Charges Owing	\$337.94
Recovery of Filing Fee	\$100.00
Less Security Deposit	-\$400.00
Total Monetary Award	\$1,637.94

The tenants 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 17, 2017

Residential Tenancy Branch