



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SMSG Mountain View Development Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RP, LAT, AS, RR, SS, OPR, OPC, MND, MNR, MNSD, FF

Introduction

The Tenant applied on February 10, 2017 for:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order for the Landlord to comply with the Act - Section 62;
3. An Order for the Landlord to make repairs to the unit – Section 32;
4. An Order authorizing the Tenant to change the locks - Section 70;
5. An Order allowing the Tenants to sublet or assign the unit - Section 65;
6. An Order for a rent reduction - Section 65; and
7. An Order for substituted service - Section 71.

The Landlord applied on March 3, 2017 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67;
3. An Order for damage to the unit - Section 67;
4. An Order to retain the security deposit - Section 38;
5. A Monetary Order for compensation - Section 67; and
6. An Order to recover the filing fee for this application - Section 72.

The Tenants did not appear and did not pursue its application. The Landlord appeared and was prepared to respond to the Tenants' application. As the Tenants did not attend the hearing to pursue its application, the application is dismissed.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions. I accept the Landlord's evidence, supported by the Witness evidence that each

Tenant was served with the application for dispute resolution and notice of hearing in person on March 7, 2017 in accordance with Section 89 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation for damages to the unit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on December 1, 2016. Rent of \$750.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$375.00 as a security deposit. The Tenants failed to pay rent for February 2017 and on February 3, 2017 the Landlord served the Tenants in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The effective date of the Notice is set out as February 13, 2017. The Tenants have not disputed the Notice, have not paid the rent indicated on the Notice, have not moved out of the unit and have not paid the ensuing rents for March and April 2017.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Based on the undisputed evidence of the Landlord I find that the Landlord gave the Tenants a valid Notice, the Tenants did not dispute the Notice and the Tenants have not moved out of the unit. As a result I find that the Landlord is entitled to an order of possession that will be effective 2 days after it is served on the Tenants.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of the terms of rent payable and the evidence of unpaid rent, I find that the Landlord is entitled to unpaid rent for the months February and March

2017. As the tenancy will end shortly I also find the Landlord entitled to one half the rents for April 2017 for a total amount of **\$1,875.00**. Should the Tenants continue to over hold the unit past April 15, 2017 the Landlord has leave to reapply for further unpaid rent. As the Tenants still have opportunity to leave the unit undamaged I dismiss the Landlord's claim for damages to the unit with leave to reapply.

As the Landlord has been successful with its application I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,975.00**. Deducting the security deposit plus zero interest of **\$375.00** leaves **\$1,600.00** owed by the Tenants to the Landlord.

Conclusion

The Tenants application is dismissed.

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenants 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.

I order that the Landlord retain the **deposit** and interest of \$375.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,600.00**. If necessary, this order may be filed in the Small Claims 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: April 05, 2017

Residential Tenancy Branch