



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR O

Introduction

This hearing dealt with an application by the landlords through the direct request (ex parte) process that was adjourned to a participatory hearing. The landlords applied, pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for unpaid rent pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67.

The tenants did not attend. The landlords attended this hearing and were given full opportunity to be heard, to present evidence and to make submissions. The landlords provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was served to the tenants by posting it on their rental unit door on January 26, 2017.

The landlords provided evidence that they served the tenants with the Application for Dispute Resolution hearing package ("ADR") by registered mail on March 21, 2017. They provided Canada Post tracking information for this mailing. Based on the sworn, undisputed testimony of the landlords and in accordance with section 88, 89 and 90 of the Act, I find that the tenants were each deemed served with the 10 Day Notice on January 29, 2017 and deemed served with two separate copies of the landlords' ADR package including the Notice of this hearing on March 26, 2017.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?
Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The landlords submitted a copy of the residential tenancy agreement which began approximately 3 years prior to the current landlords' purchase of the rental property on April 29, 2016. The original rental amount for this property was \$900.00 payable on the 15th of each month. The landlords both testified that they continued to hold the \$450.00 security deposit paid by the tenants on April 29, 2016.

The landlords testified that, after renovating and adding a functional room to the rental unit, the landlords and tenants agreed that the tenants would have full access and use of the additional room. The landlords testified that the tenants agreed to a new rental amount of \$1300.00. The landlords both testified that the residential tenancy agreement was amended to reflect the new rental amount. The landlords submitted a copy of the residential tenancy agreement where, under the title "Rent", it reads,

The tenant will pay the rent of \$900.00 + 400.00 more for x'tra bed/room/bathroom. "As of Oct 1/2016"

The amendment is handwritten. The landlords indicated that this residential tenancy agreement was not re-signed or initialled by the parties when that change was made.

The landlords submitted documentary evidence reflecting an electronic conversation with the tenants while they were out of the country for an extended period of time. The landlords submitted copies of the requests for the payment of outstanding rent and the limited responses received from the tenants. The landlords testified that the tenants stated that they should not be required to pay full rent when they are not occupying the rental unit (while they are out of town/country). The landlords testified that the tenants have been unwilling to communicate with the landlord since their return to the country.

The landlords applied for an Order of Possession for unpaid rent for the month of January 2017 in the amount of \$1300.00. The landlords submitted a copy of the 10 Day Notice to End Tenancy with an effective date of February 5, 2017. The landlords testified that the tenants did not pay rent of \$1300.00 due on January 1, 2017. The landlords testified that, as they were still out of the country at that time, the tenants also did not pay February rent on February 1, 2017.

The landlords testified that the tenants paid \$1765.00 to the landlord on February 27, 2017 and \$1300.00 at the beginning of March 2017. They submitted a copy of a receipt to the tenants indicating that the amount was accepted, "for use and occupancy only" to demonstrate that they have been clear when accepting payments that they do not intend to have the tenancy continue. Landlord MK also testified that she advised the

tenants, on more than one occasion, that their payment toward the outstanding amount did not reinstate their tenancy.

After the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent, the landlords testified that the tenants did not pay the January 2017 rent. The landlords testified that the current rental arrears owed by the tenants totals \$835.00 and that the tenancy has not been reinstated by partial payments to the outstanding rental amounts. They sought an Order of Possession as well as a monetary award of \$835.00.

Item	Amount
Unpaid Rent – January 2017	\$1300.00
Unpaid Rent – February 2017	1300.00
Unpaid Rent – March 2017	1300.00
Tenants' payment towards rent arrears	-1765.00
Tenants' payment towards rent arrears	-800.00
Less Security Deposit	-450.00
Total Monetary Order Sought by landlord	\$885.00

Analysis – Rent Increase and Application to End Tenancy for Unpaid Rent

I find that the landlords have not taken the proper steps required under the Act to increase the rent paid by the tenants. Section 40 to section 43 of the *Act* describes the requirements to meet in increasing rent. Section 43 allows a landlord to apply to the Residential Tenancy Branch for approval of a rent increase in an amount that is greater than the basic Annual Rent Increase. In accordance with the *Residential Tenancy Regulation*, a landlord may impose an Annual Rent Increase up to, but not greater than 2.9% for 2016.

Amount of rent increase

- 43 (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,
 - (b) ordered by the director on an application under subsection;
- or
- (c) agreed to by the tenant in writing.

The Residential Tenancy Regulation (“the Regulation”) pursuant to the *Act* sets out the limited grounds for applying for an Additional Rent Increase. In this case, the landlords did not increase the rent by an amount calculated in accordance with the regulations. The landlords did not apply for an order by the director to increase the rent. The

landlords were unable to present sufficient proof to show that the tenants agreed in writing to the rent change.

As indicated in Residential Tenancy Policy Guideline No. 37,

A landlord who desires to increase a tenant's rent by more than the amount of the allowed annual rent increase can ask the tenant to agree to an increase that is greater than that allowed amount. If the tenant agrees in writing to the proposed increase, the landlord is not required to apply to an arbitrator for approval of that rent increase. The landlord must still follow requirements regarding the timing and notice of rent increases.

The tenant's written agreement to a proposed rent increase must clearly set out the agreed rent increase (for example, the percentage increase and the amount in dollars), and the tenant's agreement to that increase. It is recommended the landlord attach a copy of the agreement to the Notice of Rent Increase given to the tenant.

Payment of a rent increase in an amount more than the allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Given all of the evidence, and the requirements provided under the *Residential Tenancy Regulation* and the Policy Guidelines, I find that the landlords have not met the burden of proof in showing that he received the agreement of the tenants in raising the rent. It is not sufficient to show that the tenant has paid the increased rental amount and, in this case, it is *not* clear the tenant intended to pay the increased rental amount.

The landlords are entitled to increase the rent annually in accordance with the regular rental provisions of the *Act* or the landlords may apply to the Residential Tenancy Branch to increase the rent in the appropriate circumstances. I find that the landlords did not apply to increase the rent in a previous application and did not apply to increase the rent at this hearing. Therefore, the landlords are not entitled to the recovery of \$1300.00 for the months of January, February, and March 2017. The landlords are entitled to the original rental amount of \$900.00 for each month.

Based on the sworn and undisputed evidence of both landlords at this hearing and the documentary evidence submitted by the landlords, I find that the tenants failed to pay the January 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. I find that, regardless of the incorrect rent increase, the tenants did not pay \$900.00 as required on January 1, 2017 as the 10 Day Notice to End Tenancy required. The

tenants have not made application to dispute the notice 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. I find that the tenants were required to vacate the premises by the effective date of the notice to end tenancy: February 5, 2017. As that has not occurred, **I find that the landlords are entitled to a 2 day Order of Possession.**

Analysis - Monetary Application

I find that, in this case, the landlords were clear in accepting any payments towards outstanding rent to inform the tenants that the tenancy was not reinstated by these payments. I find that the rental amount of \$900.00 was not paid by the tenants for the months of January and February 2017 creating an outstanding amount of \$1800.00. The landlords candidly testified that the tenants made two payments to the landlord: \$1765.00 on February 27, 2017 & \$800.00 at the beginning of March 2017. These payments were made after the 5 day period in which the tenants were required by the *Act* and the notice to end tenancy to pay outstanding rent. These amounts were also less than the amounts owed by the tenants. I find that \$135.00 remains outstanding for rent and that the landlords are entitled to this amount. **I find that the landlords are entitled to a monetary amount of \$135.00.**

The landlords testified that they continue to hold a security deposit of \$450.00 plus any interest from April 2013 to the date of this decision for this tenancy. [There is no interest for this period.] I allow the landlords to retain a portion of the tenants' \$450.00 security deposit to satisfy the amount owed by the tenants.

Item	Amount
Unpaid Rent – January 2017	\$900.00
Unpaid Rent – February 2017	900.00
Unpaid Rent – March 2017	900.00
Tenants' payment towards rent arrears	-1765.00
Tenants' payment towards rent arrears	-800.00
Total Monetary Order to Landlords	\$135.00

The landlords did not apply to recover the filing fee for this application.

The landlords also sought direction with respect to obtaining insurance information for the tenants' home business. However, since the tenancy has come to an end, I find that no direction or orders are necessary at this time.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I allow the landlords to retain \$135.00 from the tenants' \$450.00 security deposit leaving a security deposit amount of \$315.00 to be addressed by the two parties at the end of the tenancy.

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 11, 2017

Residential Tenancy Branch