



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent and damages pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was 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 to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated February 11, 2017 was served personally on the tenants on the same date. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the landlord's 10 Day Notice on February 11, 2017.

The landlord testified that the landlord's application for dispute resolution dated April 3, 2017 was personally served on each tenant on April 4, 2017, in the presence of a witness. I find that the tenants were served with the landlord's application for dispute resolution and evidence package in accordance with sections 88 and 89 of the *Act* on April 4, 2017.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that the tenants have not paid rent for the month of May and the rent arrear has increased. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that it could be reasonably anticipated that the rent arrear would increase over time, I amend the

landlord's Application to increase the landlord's monetary claim from \$8,850.00 to \$9,900.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent and damages as claimed?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began in August, 2016. The rent is \$1,000.00 payable on the first of the month. No security deposit was paid at the start of the tenancy. The tenants continue to reside in the rental unit.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$4,850.00, the amount initially sought in the 10 Day Notice. The landlord testified that the tenants have not made any payment since the 10 Day Notice was issued nor is he aware of the tenants having filed a dispute of the 10 Day Notice. The landlord testified that the tenants have only paid partial rent for August, 2016, and failed to pay the rent in full for September, October, and November, 2016 and January, February, March, April and May, 2017. The landlord said that the total amount owing for the tenancy as of May 8, 2017, the date of the hearing was \$7,400.00. The landlord testified that he is only seeking a rental arrear of \$400.00 for the month of May.

The landlord testified that the tenants have caused damage to the rental unit which he estimates to be valued at \$2,500.00. The landlord specifically mentioned that the tenants have damaged the carpeting in the rental unit.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,000.00. I accept the landlord's evidence that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, February 21,

2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$7,400.00. The landlord testified that he is only seeking the amount of \$400.00 for the May rent. I issue a monetary award in the landlords' favour for unpaid rent of \$7,400.00 as at May 8, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

I find that it is premature to make an order regarding damages to the rental unit as the tenants have the right to make repairs and minimize any damage claim before the end of the tenancy. I dismiss the landlord's application for damages, with leave to reapply.

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.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants or anyone 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 in the amount of \$7,500.00 under the following terms, which allows the landlords to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent August	\$500.00
Unpaid Rent September	\$1,000.00
Unpaid Rent October	\$1,000.00
Unpaid Rent November	\$500.00
Unpaid Rent January	\$1,000.00
Unpaid Rent February	\$1,000.00
Unpaid Rent March	\$1,000.00
Unpaid Rent April	\$1,000.00
Unpaid Rent May	\$400.00
Filing Fee	\$100.00
Total Monetary Order	\$7,500.00

The tenants must be served with this Order as soon as possible. Should the tenants 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.

The landlord's claim for damages is dismissed with leave to reapply.

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: May 8, 2017

Residential Tenancy Branch