



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNDC FF

Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenants had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent in the amount of \$500.00 for the month of May 2017. Although the tenants did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Additionally, the landlord submitted a monetary order worksheet requesting unpaid utilities and costs associated with the filing of the application. However, the landlord did not file an amendment to change the monetary amount requested in the original application so these parts of the application were dismissed with leave to reapply.

Issues

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

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

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

Background and Evidence

The tenancy began on November 27, 2016 with a monthly rent of \$1300.00 payable on the 1st day of each month. The tenants paid a security deposit of \$650.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on March 21, 2017 he served the tenants with the 10 day Notice to End Tenancy for unpaid rent or utilities by sending a copy by registered mail. A registered mail receipt and tracking number was provided on file. The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$1840.00. The landlord testified that this includes unpaid rent of \$500.00 for each of the months of February, March, April and May 2017 plus \$40.00 loaned to the tenants in February 2017 less a \$200.00 payment received in April 2017.

The tenants acknowledged service of the 10 day Notice on March 22, 2017 and acknowledged that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenants testified that the landlord received \$800.00 each month directly from social assistance but acknowledged they were not able to pay the additional \$500.00 due to unforeseen circumstances.

The tenants agreed to the amount of outstanding rent as claimed by the landlord.

Analysis

I am satisfied that the tenants received the 10 day Notice to End Tenancy on March 22, 2017 pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of 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, as in the present case, 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.

I find that the Notice issued on March 21, 2017 complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that the tenant was obligated to pay monthly rent in the amount of \$1300.00 but failed to pay the full rent as claimed by the landlord. I accept the landlord's claim for outstanding rent as claimed with the exception of the \$40.00 loan amount. The \$40.00 is technically a personal loan and not recoverable as unpaid rent under the Act. The landlord is awarded \$1800.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1900.00.

The landlord continues to hold a security deposit of \$650.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1250.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$1250.00. 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.

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 09, 2017

Residential Tenancy Branch