



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LU'MA NATIVE HOUSING BCH SOCEITY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF MNR MNSD OPR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 46 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and utilities;
- an application to keep all or part of the security deposit pursuant to section 38 of the *Act*; and
- recovery of the filing fee from the tenants pursuant to section 72 of the *Act*.

Only the agent for the landlord appeared at the hearing. She will herein be referred to as the "landlord." The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was posted on the front door of the rental unit on April 19, 2017. I find that in accordance with sections 88 & 90 of the *Act*, the tenants were served with the 10 Day Notice on April 22, 2017.

The landlord testified that the tenants were individually sent copies of the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") along with evidentiary packages by way of Registered Mail on May 20, 2017. Canada Post Tracking numbers were provided to the hearing and submitted as part of the landlord's evidentiary package. Pursuant to sections 88, 89 & 90 of the *Act* the tenants are deemed to have received both the landlord's application and evidentiary packages on May 25, 2017.

At the outset of the hearing the landlord asked if she could amend her application for a Monetary Order due to the tenants' continued occupation of the rental unit. The landlord sought to change her order to reflect unpaid rent for June 2017. Pursuant to section 64(3)(c) I amend the landlord's application for a Monetary Order to \$2,258.00 in consideration of unpaid rent for June 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee from the tenants?

Is the landlord entitled to apply the security deposit against the Monetary Order?

Background and Evidence

Undisputed testimony was provided by the landlord that this tenancy began on July 1, 2003. Rent was \$520.00, due on the first of the month. A \$343.00 security deposit continues to be held by the landlord.

The landlord stated that she is seeking a Monetary Order for \$2,358.00. This amount reflects unpaid rent for March, April, May and June 2017 as well as outstanding rent of \$178.00 for February 2017, and a return of the filing fee.

Item	Amount
Partial rent for February 2017	\$178.00
Unpaid rent for March 2017	520.00
Unpaid rent for April 2017	520.00
Unpaid rent for May 2017	520.00
Unpaid rent for June 2017	520.00
Return of Filing Fe	100.00
Total =	\$2,358.00

Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application 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. In this case, this required the tenants to vacate the premises by the corrected effective date of the 10 Day Notice, this being May 1, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The landlord provided undisputed testimony that rent had not been paid for March, April, May and June 2017. She also explained that \$178.00 for February 2017 rent remains unpaid.

The tenants did not appear at the hearing and no evidence was provided to the hearing by them. I find that the landlord is entitled to a monetary award for the outstanding rent.

Pursuant to section 72(2)(b) of the *Act* the landlord may retain the tenants' security deposit against the monetary award.

As the landlord was successful in her application, she may recover the \$100.00 filing fee from the tenants.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within 2 day of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order pursuant to section 67 of the *Act* for \$2,015.00 in favour of the landlord as follows:

Item	Amount
Partial rent for February 2017	\$178.00
Unpaid rent for March 2017	520.00
Unpaid rent for April 2017	520.00
Unpaid rent for May 2017	520.00
Unpaid rent for June 2017	520.00
Return of Filing Fe	100.00
Less Security Deposit	(-343.00)
Total =	\$2,015.00

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: June 30, 2017

Residential Tenancy Branch