



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDS, 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 pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants acknowledged receipt of evidence submitted by the landlord. The tenants did not submit any documentation for this hearing.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

The landlord gave the following testimony: The tenancy began on or about September 1, 2016. Rent in the amount of \$1700.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$850.00. The tenant failed to pay rent in the month(s) of February, March and April and April 28, 2017 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of May and June. The landlord testified that he was extremely lenient with the tenants and that he felt compassion for their situation but he can is having difficulty making mortgage payments due to their lack of rental payments. The landlord testified that the tenants have not made any rental payments for the last five months.

The tenants gave the following testimony. The tenants testified that they will be moving out in the next day or two. The tenants testified that they don't believe they owe the landlord any rent due to the condition of the unit and that they feel that he has been paid in full.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In addition, the tenants have not provided any documentation to support their position that they have made all rental payments. Based on the above facts I find that the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenant must be served with the order of possession. Should the tenant 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.

As for the monetary order, I find that the landlord has established that the tenants have not made rental payments for five months and therefore is entitled to \$8500.00 in unpaid rent. The landlord is also entitled to recovery of the \$100.00 filing fee. I order that the landlord retain the \$850.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$7750.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$7750.00. The landlord may retain the security deposit.

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 21, 2017

Residential Tenancy Branch