



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPL, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary Order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

All parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

During the hearing the parties testified that there are two separate tenancy agreements between the landlord and each of the tenants. The landlord issued separate Notices to End Tenancy to each tenant and served each with a copy of the landlord's application for dispute resolution. The landlord testified that the present application deals with two tenancies. In accordance with Rules of Procedure 2.7 and 2.10, as the landlord's application pertains to the same residential property and seeks similar remedies based on substantially the same facts, I allowed the landlord's application for both tenancies.

As all parties were in attendance I confirmed that there were no issues with service. The tenants testified that they received copies of the landlord's 10 Day Notice, the landlord's 2 Month Notice, the landlord's application for dispute resolution and the landlord's evidentiary materials. The tenants did not serve any evidence of their own. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly

served with copies of the landlord's 10 Day Notice, 2 Month Notice, application and evidence package.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to retain all or a portion of the security deposit?

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

Background and Evidence

The parties agreed on the following facts. The rental unit is a detached home and each tenant has a separate tenancy agreement with the landlord.

The tenant CW testified that he moved into the rental unit in May, 2010. The current monthly rent is \$800.00. The tenant said he paid a security deposit of \$400.00 at the start of the tenancy. The landlord disagreed and said that his records indicate a security deposit of \$133.00 is held.

The tenant MM said that he moved into the rental unit in August, 2016. He pays a monthly rent of \$500.00 and did not pay a security deposit at the start of the tenancy.

The landlord testified that neither tenant has paid any rent since early in the year. The landlord said that tenant CW's tenancy is in arrears by \$5,700.00 as no rent has been paid since January, 2017. The landlord said the tenant MM's tenancy is in arrears by \$3,000.00 as no rent has been paid since February, 2017.

The tenants testified that rent was not paid as they entered an agreement with the landlord whereby no rent was payable. The landlord said that no such agreement was made with either tenant, that it was discussed that the tenants could stay in the rental building until April 30, 2017 without paying rent if they vacated at that time but no agreement was reached.

The landlord testified that the rental building has been sold. The landlord submitted into written evidence a copy of the Contract of Purchase and Sale. The landlord said that he has been told that the purchaser intends to occupy the rental building. The landlord said that he has served the tenants with both a 2 Month Notice for landlord's use as the

rental property is being sold, and a 10 Day Notice for Unpaid Rent as the tenants have failed to pay any rent since early in the year.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If a tenant does not make an application for dispute resolution the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. I find that the tenants have failed to file an application for dispute resolution within the 15 days of service granted under section 49(8) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the May 23, 2017, 2 Month Notice, July 31, 2017.

Both of the landlord's 2 Month Notices meets the form and content requirements of section 52 of the *Act* as they are in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*. As the effective date of the 2 Month Notices has passed, I issue a 2 day Order of Possession.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the parties that neither tenant has paid rent for several months. I do not find the tenants' evidence that there was an agreement whereby the tenants did not have to pay any rent to be credible or reasonable. I find the landlord's version of events where there was a discussion that the tenants may remain in the rental unit without paying rent if they vacated at a specified time to be more realistic. I accept the landlord's evidence that no agreement was reached between the parties. I accept the landlord's evidence that the arrears for tenant CW is \$5,700.00. I accept the landlord's evidence that the arrears for the tenant MM is \$3,000.00. I issue a

monetary award for unpaid rent of \$5,700.00 against tenant CW and \$3,000.00 against tenant MM, pursuant to section 67 of the *Act*.

I find the tenant's evidence that the security deposit paid for this tenancy was half of the monthly rent in the amount of \$400.00 to be more credible than the landlord's recollection of \$132.00, a figure which the landlord could not provide explanation for. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain tenant CW's security deposit of \$400.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour against tenant CW.

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 which I split between the two tenants.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant 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 two monetary Orders in the landlord's favour under the following terms.

Against tenant CW:

Rental Arrears	\$5,700.00
½ of Filing Fee	\$50.00
Less Security Deposit	-\$400.00
Total Monetary Award	\$5,350.00

Against tenant MM:

Rental Arrears	\$3,000.00
Filing Fee	\$50.00
Total Monetary Award	\$3,050.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: August 15, 2017

Residential Tenancy Branch