



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was convened after the issuance of a July 28, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlords' application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter.

The tenants did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Landlord A.K. (the landlord) stated that he would be representing the interests of both landlords in this matter.

The landlord testified that they sent the tenant a copy of the notice of this adjourned hearing by registered mail on August 02, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the notice of this hearing on August 07, 2017, the fifth day after its registered mailing.

The landlord also gave documentary evidence that the landlords personally handed the tenants a copy of all documentary evidence as a part of the direct request proceeding package on July 20, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the evidence on July 20, 2017.

The landlord provided written evidence that they sent the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenants by way of Canada Post Xpress post on July 02, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this mailing. In accordance with section 88 and 90 of the *Act*, I find that the 10 Day Notice, identifying \$3,360.00 in rent owing for this tenancy, was deemed served to the tenants on July 07, 2017.

The landlord testified that the tenants are still in the rental unit and have not paid any rent since the 10 Day Notice was issued by the landlords. The landlords requested to amend their application for a monetary award from \$3,360.00 to \$5,040.00 to reflect the tenants' failure to pay \$1,680.00 in monthly rent for August 2017. I allowed this amendment to the landlords' monetary application as it is clear that the tenants would have known that rent for the rental unit had become owing since the landlords submitted their application for dispute resolution.

The landlords' amended application for a monetary award of \$5,040.00 is for the following items:

Item	Amount
Unpaid rent June 2017	\$1,680.00
Unpaid rent July 2017	1,680.00
Unpaid rent August 2017	1,680.00
Amended Requested Monetary Order	\$5,040.00

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord gave written evidence that this tenancy began on April 01, 2015, with a monthly rent of \$1,680.00 due on the first day of the month. The landlord testified that they continue to retain a \$850.00 security deposit in trust.

A copy of the signed 10 Day Notice, dated July 02, 2017, with an effective date of July 14, 2017, was included in the landlords' evidence. The landlord testified that the tenants have not made any payments toward this tenancy since the 10 Day Notice was issued.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed evidence and testimony, I find the tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make an 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 failure of the tenants to take either of these actions within five days led to the end of this tenancy on July 17, 2017, the corrected effective date on the 10 Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by July 17, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession.

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. 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 of the *Act* 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. 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.

Based on the undisputed written evidence and sworn testimony, I find that the landlord is entitled to a monetary award of \$5,040.00 for unpaid rent owing for this tenancy for the period from June 2017 to August 2017.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlords' favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenants' security deposit:

Item	Amount
Unpaid June 2017 Rent	\$1,680.00
Unpaid July 2017 Rent	1,680.00
Unpaid August 2017 Rent	1,680.00
Less Security Deposit	-850.00
Total Monetary Order	\$4,190.00

The landlords are provided with these Orders in the above terms and the tenants must be served with these Orders as soon as possible. Should the tenants fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 24, 2017

Residential Tenancy Branch