



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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 sections 46 and 55; and
- a monetary order for unpaid rent pursuant to section 67.

The landlord's agent, the building manager and Tenant B.H. (the tenant) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord's agent (the landlord) indicated that they would be the primary speaker on behalf of the landlord.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package were sent to each tenant by way of registered mail on September 21, 2017. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on September 26, 2017, the fifth day after their registered mailing.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the rental unit at 4:50 p.m. on September 05, 2017. In accordance with sections 88 and 90 of the *Act* I find that the 10 Day Notice, identifying \$1,875.00 in rent owing for this tenancy, was deemed served to the tenants on September 08, 2017.

At the outset of the hearing the landlord sought to increase their monetary claim from \$1,875.00 to \$4,375.00 to reflect the tenants' failure to pay \$1,250.00 in monthly rent for October 2017 and November 2017, the additional months of unpaid rent waiting for this hearing. Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be

amended at the hearing. I allow the amendment as this was clearly rent that the tenants would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Background and Evidence

The landlord testified that this tenancy began on August 15, 2017, with a monthly rent of \$1,250.00 due on the first day of each month. The landlord further testified that they continue to retain the security deposit in the amount of \$625.00.

A copy of the signed 10 Day Notice, dated September 05, 2017, with an effective date of September 18, 2017, was included in the landlord's evidence.

The landlord's amended application for a monetary award of \$4,375.00 is for half a month's unpaid rent for August 2017 in the amount of \$625.00 as well as \$1,250.00 in unpaid rent for September 2017, October 2017 and November 2017.

The landlord testified that they are seeking to end the tenancy due to the unpaid rent. The landlord stated that the tenants paid their security deposit but no rent has been paid since the beginning of the tenancy.

The tenant testified that there have been numerous issues that have not been addressed by the landlord.

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 evidence and the testimony of both parties, 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 the same timeframe. In accordance with section 46(5) of the *Act*, due to the failure of the tenants to take either of these actions within five days, I find the tenants are conclusively presumed to have accepted the end of this tenancy on September 18, 2017, the effective date on the 10

Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by September 18, 2017. As this has not occurred, I find that the landlord is 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.

Based on the landlord's evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$4,375.00 for the half a month's unpaid rent for August 2017 as well as the unpaid rent for September 2017, October 2017 and November 2017.

Although the landlord's application does not seek to retain the tenants' 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 landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 landlord's favour under the following terms, which allows the landlord to recover unpaid rent, and to retain the tenants' security deposit:

Item	Amount
Unpaid Rent for August 15- 31, 2017	\$625.00
Unpaid September 2017 Rent	1,250.00
Unpaid October 2017 Rent	1,250.00
Unpaid November 2017 Rent	1,250.00
Less Security Deposit	-625.00
Total Monetary Order	\$3,750.00

The landlord is provided with this Order in the above terms and 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 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: November 16, 2017

Residential Tenancy Branch