



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR, O

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed or damages under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application, 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 parties acknowledged receipt of evidence submitted by the other.

Preliminary Issue

At the outset of the hearing, the landlord advised that there are numerous items damaged in the unit that he wishes to address. The landlord advised that some of the repairs have been completed but the unit still has a lot of damage that he alleges are a result of the tenants’ actions. It was explained to the landlord that he is premature in

requesting to deal with damages as the tenants still reside in the unit and is unsure of what condition the unit will be in at move out. It was further explained that the landlord is at liberty to make a separate application to address these issues if he and the tenants are unable to resolve them. Both parties indicated they understood, accordingly; I dismiss the landlords claim for damages to the unit with leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to have the 10 Day Notice to End Tenancy set aside, if not, are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or Act?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is either party entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave the following testimony. The tenancy began on October 1, 2007. The landlords collected, and still hold, a security deposit of \$1,050.00. The monthly rent is \$2540.00. The landlord testified that the tenants have made a partial payment of \$1090.00 for the month of July but have not made any payments for August – November, inclusive. The landlord issued the 10 Day Notice on August 25, 2017 for an outstanding amount of \$1450.00. The landlord testified that the tenants have not paid any rent since the 10 Day Notice was issued.

The landlord submitted a monetary order worksheet requesting the following:

Item	Amount
Unpaid Rent for July 2017	\$1450.00
Unpaid Rent for August - November 2017	10160.00
Recovery of Filing Fee	100.00
Less Security Deposit	-1050.00
Total Monetary Order Requested	\$10660.00

The tenants gave the following testimony. The tenants testified that they are moving out by November 30, 2017 and have no issue with the landlord being granted an order of possession. The tenants testified that they agree that they have not paid rent for the

months of September 2017– November 2017 and owe the landlord for that time. The tenants dispute the landlords claim for rent for the months of July and August. The tenants testified that they paid the landlord in cash for those months but were not given a receipt for those payments.

Analysis

Based on the tenants own testimony that they have not paid the rent from September 2017 to November 2017, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As for the monetary order, the landlord provided some contradictory documentation. The landlord testified that the tenants owe \$1450.00 for July however; the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities submitted by the landlord refers to the month of August and is dated August 25, 2017. Based on the landlords own documentation, I find that there isn't unpaid rent for July. The tenants stated that they paid the rent for August but have not provided supporting documentation such as a withdrawal notice or statement of account to reflect the amounts paid as testified. Based on the landlords own documentation, I find that the landlord has proven that the amount of unpaid rent for August is \$1450.00, not the \$2540.00 as claimed. The tenants agree to the claim of unpaid rent for the months of September 2017– November 2017. The landlords are entitled to \$8800.00 in unpaid rent.

The landlords continue to hold the tenant's security deposit in the amount of \$1,050.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenant.

The tenants have not been successful in their application.

Conclusion

I grant an Order of Possession to the landlords. I issue a \$7850.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent and the filing fee, and also allows the landlords to retain the tenant's security deposit:

Item	Amount
Unpaid Rent for August 2017	\$1450.00
Unpaid Rent for September 2017 – November 2017	7350.00
Recovery of Filing Fee	100.00
Less Security Deposit	-1,050.00
Total Monetary Order	\$7850.00

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.

The tenants application is dismissed in its entirety.

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 20, 2017

Residential Tenancy Branch