



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, CNR, OLC

Introduction

This hearing dealt with applications from both the landlords and Tenant KL (the tenant) under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

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

The tenant identified Landlord JA (the landlord) in her application for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:00 a.m. in order to enable them to call into 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. The landlord gave sworn testimony that they he was not served with the tenant's application for dispute resolution, although she advised him that she intended to file an application with the Residential Tenancy Branch.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing, I order her application dismissed without liberty to reapply.

The landlords gave undisputed written evidence and sworn testimony that the landlord placed a copy of the 10 Day Notice in the tenants' mailbox on October 22, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on October 25, 2017, the third day after this Notice was placed in the tenants' mailbox.

The landlord gave undisputed sworn testimony that he sent both tenants individual copies of the dispute resolution hearing package and written evidence by way of registered mail on November 1, 2017. By that time, he understood that RW was again residing at the rental unit. He said that RW returned at some point since September 10, 2017, when KL signed her new agreement with the landlords. The landlord provided the Canada Post Tracking Numbers to confirm these registered mailings. Based on the landlord's undisputed evidence and in accordance with sections 88, 89 and 90 of the *Act*, I find that the parties were deemed served with the dispute resolution hearing and written evidence packages on November 6, 2017, five days after their registered mailing of these documents.

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 landlords entered written evidence supported by sworn testimony that this periodic tenancy began on April 1, 2017. Although the initial Residential Tenancy Agreement identified both KL and RW as co-tenants, only RW signed that initial agreement. A new Residential Tenancy Agreement was signed by Tenant KL (the tenant) as the sole tenant on September 10, 2017, for a tenancy that began on September 1, 2017. Monthly rent in both agreements was set at \$1,250.00, payable in advance on the first of each month. The landlord continues to hold the \$625.00 security deposit paid presumably by RW, as the sole tenant, on April 1, 2017.

The landlord testified that other tenants in this rental building advised the landlord that the tenants likely vacated their rental unit a few days before this hearing. When they visited the rental property a few days before this hearing, the landlords could not see anything other than garbage and debris in the rental unit through the main floor window of the rental unit. They said that they were uncertain as to whether anything of value

remains in the rental unit, as they have not attempted to enter the rental unit in advance of this hearing.

Although the landlords may be able to enter the rental unit if they discover that the rental unit has in fact been vacated, the landlord asked for the issuance of an Order of Possession to be used if the landlords discover that the rental unit remains occupied.

The landlords' application for a monetary award of \$4,550.00 included the following:

Item	Amount
Unpaid Rent Owing prior to September 1, 2017 due to NSF cheque	\$800.00
Unpaid September 2017 Rent	1,250.00
Unpaid October 2017 Rent	1,250.00
Unpaid November 2017 Rent	1,250.00
Total Monetary Award Requested	\$4,550.00

Analysis

There is undisputed evidence that the tenant did not make any payments to the landlords after receiving the 10 Day Notice. While the \$3,200.00 amount identified as owing in the 10 Day Notice as of September 1, 2017 was incorrect, I am satisfied that at least the \$1,250.00 owing for September 2017 was owed by the tenant at that time. As the tenant did not pay any portion of the \$1,250.00 for which her signed tenancy agreement of September 10, 2017 made her responsible, I am satisfied that the landlords have demonstrated their entitlement to an Order of Possession based on the 10 Day Notice. I issued the landlords an Order of Possession to be used in the event that the rental unit has not already been vacated.

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.

In this case, I am satisfied by the landlords' undisputed sworn testimony and written evidence that the landlords are entitled to a monetary award totaling \$4,550.00 for unpaid rent that has arisen during these two successive tenancies. Of the amount claimed, \$800.00 becomes the sole responsibility of Tenant RW. This is because RW is the only tenant signatory to the original tenancy agreement that covered the period from April 1, 2017 until the new tenancy with Tenant KL took effect on September 1, 2017.

Although the landlords' application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the \$625.00 security deposit paid by the tenant responsible for the initial tenancy agreement (i.e., Tenant RW) plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period. This results in a monetary Order in the landlords' favour against Tenant RW in the amount of \$175.00 (\$800.00 - \$625.00 = \$175.00).

I find that Tenant KL is responsible for the rental arrears totalling \$3,750.00 for the three months commencing on September 1, 2017, by which time she had assumed sole legal responsibility for the rental of these premises from the landlords. I issue a monetary Order in the landlords' favour to this effect.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 a monetary Order in the landlords' favour in the amount of \$175.00 against Tenant RW, for unpaid rent owing until the end of August 2017, less the value of the security deposit, which I order the landlords to retain.

I issue a monetary Order in the landlords' favour in the amount of \$3,750.00 against Tenant KL for unpaid rent owing for the months of September, October and November 2017.

The landlords are provided with these Orders in the above terms and each of the tenants must be served with the Orders against them 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: November 23, 2017

Residential Tenancy Branch