



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL MNRL-S OPR CNR FFT MNDCT

Introduction

This hearing was convened in response to applications by both the tenants and the landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the landlord requested:

- an Order of Possession for non-payment of rent and utilities pursuant to section 55 of the *Act*;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for money owed for damage or loss under the *Act*;
- authorization to retain the security deposit pursuant to section 72 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The application from the tenants requested:

- a cancellation of the Notice to End Tenancy for Unpaid rent pursuant to section 46 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*; and
- a return of the filing fee from the landlord pursuant to section 72 of the *Act*.

Tenant P.Z. (the “tenant”) appeared at the hearing for the tenants, while agent J.Z. (the “landlord”) appeared at the hearing for the landlord. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Following opening remarks the tenant explained that he was not actually seeking to recover \$10,800.00 from the landlord (the amount requested by the landlord for unpaid rent) but was merely looking to dispute the landlord’s application for dispute resolution. Pursuant to section 64(3)(c), the tenants’ application is amended to reflect this request,

and I will focus solely on the settlement reached by the parties and the landlord's application for a monetary award not covered by the settlement.

Issue(s) to be Decided

Can the tenants cancel the landlord's Notice to End Tenancy? If not, is the landlord entitled to an Order of Possession?

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

Can the landlord retain the tenants' security deposit?

Is either party entitled to a return of the filing fee?

Preliminary Issues – Settlement Agreement

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy will end by 1:00 P.M. on December 24, 2017, by which time the tenant and any other occupants will have vacated the rental unit;
2. The tenants agreed to pay the landlord \$11,969.37

The above amount includes compensation for unpaid rent for the months of October, November and December 2017, along with unpaid utilities as listed below.

Item	Amount
Unpaid Rent for October 2017	\$3,600.00
Unpaid Rent for November 2017	3,600.00
Unpaid Rent for December 2017	3,600.00

Unpaid Utilities for Jan 1/17 to March 31/17	382.48
Unpaid Utilities for April 1/17 to June 30/17	417.96
Unpaid Utilities for July 1/17 to September 30/17	368.93
Total =	\$11,969.37

I will provide a detailed analysis regarding the remainder of the landlord's monetary application because the parties were unable to reach a settlement on alleged unpaid rent for the months of July, August, and September 2017.

Background and Evidence

Testimony provided to the hearing by both parties established that this tenancy began on September 15, 2017. Rent was \$3,600.00 per month, and deposits of \$1,800.00 (security) and \$300.00 (pet) continue to be held by the landlord.

The landlord has applied for a monetary award of \$10,800.00 representing unpaid rent for the months of July, August and September 2017.

During the hearing, the parties provided conflicting testimony and evidence regarding the manner in which rent was paid. The tenant explained that he was instructed by the landlord to pay rent in cash every three months. The landlord argued that this was not true and that rent was due once a month.

As part of their evidentiary packages, the parties produced conflicting copies of the tenancy agreement. The tenancy agreement submitted by the tenant notes that rent is to be paid 3 months at a time and is due on the 1st day of each month. The landlord submitted a copy of a tenancy agreement which contains this same information, but showing it struck through. Furthermore, it notes that rent is due on the 7th of each month.

The tenant explained that he felt the landlord's application for a monetary award related to unpaid rent for July, August and September 2017 should be dismissed because he paid rent to the landlord in cash on either July 4 or 5, 2017 when the landlord arrived to the property in a large, brown SUV. The tenant said that despite his request, no receipt was provided to him by the landlord.

The tenant continued by explaining that prior to these alleged outstanding rent payments, rent was paid in a variety of fashions, but was always paid in three month

increments. The tenant said that following payment of rent for July, August and September 2017 he spoke to a friend who worked for a bank and was advised that he should be paying by cheque, rather than in cash. He said that post-dated cheques which he had given to the landlord were cancelled.

The landlord argued that the tenant had failed to pay rent for the time period in question (July, August and September 2017) and denied that he had ever received any cash from the tenants. Furthermore, the landlord said that he did not drive a brown SUV as described by the tenant. The landlord provided testimony which was disputed by the tenant that rent had only been paid in an instalment of three months, at the outset of the tenancy. The landlord said that since this payment, the tenant had been asked to pay rent on a month to month basis. In addition, the landlord said that the non-payment of rent for these months was only discovered by the owner in September 2017 because the landlord had been overseas and had failed to analyze his bank account.

Analysis

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. In this case, the onus is on the landlord to prove his entitlement to a claim for a monetary award.

In most instances, determining whether or not rent had been paid would be a straightforward endeavour; however, in this case the parties have both presented conflicting testimony.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for rent in the amount of \$10,800.00 for the months of July, August and September 2017 and considering the tenant's testimony that he paid the landlord \$10,800.00 on approximately July 4, 2017, the burden of proving that rent was not paid, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

The landlord provided a receipt for a payment of rent for a three month period when the tenancy first began. The landlord acknowledged that rent was received in this manner but explained it had only been done so on one occasion. The tenant disputed this version of events and said that rent had continued to be paid every three months. The landlord explained that following this initial payment, rent was paid in a variety of manners, most recently in the form of cheques issued on a monthly basis. As part of his evidentiary package, the landlord included cheque from July 2017 which was returned because of insufficient funds. The tenant acknowledged cancelling this cheque, arguing that he had done so after paying cash to the landlord.

A receipt for three months' worth of rent was provided to the hearing, demonstrating that rent was paid at the outset of the tenancy in the amount of \$10,800.00. The landlord has failed to provide receipts for any other payments made during this tenancy. The landlord did not submit any other evidence, such as a copy of a payment ledger or bank statements, to corroborate his claim that the tenant did not pay \$10,800.00 in July 2017.

In addition to the above, it is difficult to reason why the tenant would admit to not paying utilities and rent to the landlord for the other time periods requested, yet would adamantly argue that rent was paid in July 2017. Finally, I find it difficult to understand why the owner would wait three months prior to issuing a notice to end tenancy for unpaid rent. At the hearing, the landlord explained that the owner was overseas and was unable to access his bank account. I do not accept this argument, because it would challenge reason to think that the owner and the landlord were not in communication for a three month period, and that the landlord had not informed the owner that rent had yet to be paid. The landlord was hired as a property manager to perform certain tasks

associated with the tenancy. Chief among these responsibilities would be informing the owner when rent was unpaid.

For these reasons, I find the landlord has not established on the balance of probabilities that rent for July, August and September 2017 was not paid. The landlord's application for unpaid rent for the months of July, August and September 2017 is dismissed.

As the parties reached a mutual agreement to end tenancy and for a portion of the monetary award, each party must bear the cost of their own filing fee.

The security deposit is to be dealt with in accordance with the *Act* following the conclusion of the tenancy on December 24, 2017.

Conclusion

To give effect to the settlement reached between the parties and as discussed with them during the hearing, I issue an Order of Possession to the landlord, which is to take effect by 1:00 P.M. on December 24, 2017. The landlord is provided with this Order and the tenants must be served with this Order in the event that the tenants do not abide by condition #1 of the above settlement. Should the tenants 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 pursuant to section 67 of the *Act* for \$11,969.37 in favour of the landlord as follows:

Item	Amount
Unpaid Rent for October 2017	\$3,600.00
Unpaid Rent for November 2017	3,600.00
Unpaid Rent for December 2017	3,600.00
Unpaid Utilities for Jan 1/17 to March 31/17	382.48
Unpaid Utilities for April 1/17 to June 30/17	417.96
Unpaid Utilities for July 1/17 to September 30/17	368.93
Total =	\$11,969.37

The landlord is provided with a Monetary Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 landlord's application to retain the tenants' security deposit is dismissed with leave to reapply.

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: December 15, 2017

Residential Tenancy Branch