



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord's evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on November 28, 2017 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on December 3, 2017. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

It is unknown whether a written tenancy agreement exists. The tenancy started in February or March 2017. Rent of \$1,895.00 is payable on the first day of each month.

At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. The Tenants paid \$875.00 for November 2017 rent and on November 6, 2017 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the unit door. The Notice indicates that rent of \$1,020.00 was owed for November 2017 rent. The Tenants have not disputed the Notice and have not moved out of the unit. Since issuing the Notice the Landlord collected rental monies of \$875.00 on November 24, 2017 and \$875.00 on December 24, 2017. No receipts were issued for this rent collection. At the hearing the Landlord sought additional rent outstanding to and including January 2018 although the application does not seek any rent beyond November 2017.

Analysis

Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Given the undisputed evidence that the Tenants received the Notice, did not dispute the Notice and have not moved out of the unit I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. As it may be expected that rent accrues as long as the Tenants continue to reside in the unit pending the hearing on the Landlord's application for an order of possession and as the Landlord has now obtained an order of possession that orders the Tenants to vacate the unit within 2 days receipt of the order of possession I amend the application to include all unpaid rent owed to January 20, 2018. The Landlord is entitled to rent of **\$1,020.00** for November 2017 rent and **\$1,895.00** for December 2017 rent and **\$1,222.60** for January 2018 rent (prorated at \$61.13 per day x 20 days) for a total of **\$4,137.60**. From this amount I deduct the rental monies collected since the issuance of the Notice of **\$1,750.00** (\$875.00 + 875.00)

leaving the total rents owed of **\$2,387.60**. As the Landlord's application has been successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,487.60**. Deducting the security deposit of **\$950.00** plus zero interest leaves **\$1,537.60** owed by the Tenants.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$950.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,537.60**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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: January 18, 2018

Residential Tenancy Branch