



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAJPUR HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- an Order of Possession for unpaid rent pursuant to section 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The landlord was represented at the hearing by agent, KG (the “landlord”), while tenant S.C. appeared on behalf of the tenants. Both parties were given full opportunity to be heard, to present evidence and to make submissions. The landlord provided oral testimony that a 10 Day Notice to End Tenancy for Unpaid Rent (“10 Day Notice”) was given to the tenants in person on October 2, 2017. The tenant acknowledged receipt of this notice. Pursuant to section 88 of the *Act*, the tenants are found to have been duly served with the 10 Day Notice.

The tenant acknowledged in person receipt of the landlord’s application for dispute resolution and evidentiary package. Pursuant to section 89 of the *Act* the tenants are found to have been served in accordance with the *Act*.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Can the landlord recover the filing fee associated with the application?

Background and Evidence

The landlord gave evidence that the original lease for the premises began on October 15, 2012. Monthly rent for this unit began at \$800.00. It rose to \$825.00 in subsequent years, and was raised to \$850.00 in January 2018. The landlord testified that he continued to hold the \$400.00 security deposit paid at the outset of the tenancy.

The landlord has applied for an Order of Possession for non-payment of rent. The landlord explained that at the time of issuance for the 10 Day Notice to End Tenancy, \$4,175.00 remained unpaid. The landlord said a payment of \$200.00 was made on November 15, 2017 and a payment of \$400.00 was made on December 8, 2017. Despite these payments rent of \$625.00 remained outstanding for November 2017; rent of \$450.00 remained outstanding for December 2017; and rent of \$850.00 was completely unpaid for January 2018.

The tenants did not provide any submissions to the hearing. Tenant S.C. acknowledged that rent remained owing and stated the tenants planned on moving at the end of January 2018. The landlord asked that if an Order of Possession were to be granted, that he would allow the tenants to remain in the premises until January 31, 2018.

Analysis

The tenants failed to pay the rent as stated owing on the 10 Day Notice, within five days of receiving the 10 Day Notice to End Tenancy on October 2, 2017. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by October 12, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. During the hearing, the landlord explained that he would allow the tenants to remain in the premises until January 31, 2018. The landlord will therefore be granted an Order of Possession for 1:00 PM on January 31, 2018.

Monetary Order

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.

I accept the uncontested testimony and evidence offered by the landlord and find that the landlord is entitled to a monetary award of \$6,075.00.

Item	Amount
------	--------

Unpaid rent per 10 Day Notice	\$4,175.00
Unpaid rent for November 2017	825.00
Unpaid rent for December 2017	825.00
Unpaid rent for January 2018	850.00
Less partial rent paid for November and December 2017	(-600.00)
Total =	\$6,075.00

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$400.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in his application, he may recover the \$100.00 filing fee associated with this application. This amount will be added to the final monetary award.

Conclusion

The landlord will be given a formal Order of Possession effective at 1:00 P.M. on January 31, 2018. These Orders must be served on the tenants. If the tenants do not vacate the rental unit by 1:00 P.M. on January 31, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order in the landlord's favour in the amount of \$5,775.00 against the tenants for the following items.

Item	Amount
Unpaid rent per 10 Day Notice	\$4,175.00
Unpaid rent for November 2017	825.00
Unpaid rent for December 2017	825.00
Unpaid rent for January 2018	850.00
Less partial rent paid for November and December 2017	(-600.00)
Recovery of Filing Fee	100.00
Less Security Deposit	(-400.00)
Total =	\$5,775.00

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.

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 9, 2018

Residential Tenancy Branch