



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aboriginal Housing Management Association
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on January 10, 2018. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord attended the hearing. The Tenants did not attend the hearing. The Landlord testified that she sent the Notice of Hearing package, along with her evidence, to each of the Tenants by registered mail on October 25, 2017. I find the Tenants received this package on October 30, 2017, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord is requesting to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Landlord to amend her application to include rent that has accrued since the original application date.

Further, the Landlord testified that the Tenants have continually failed to pay for their utilities and given they are still living in the rental unit, these bills continue to grow. Although the Landlord indicated in her application that she wanted to recover utilities in addition to rent, during the hearing she stated that she would like to apply for recovery of these utilities at a later time, once she knows the final amount and has a chance to organize the amounts. In consideration of this, **I grant the Landlord leave to reapply for recovery of the utilities only.** The only issues I will consider in this hearing are the order of possession for unpaid rent, and a monetary order for any rent that was not paid.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that rent is currently \$500.00 per month and is due on the first of the month. The Landlord stated that she does not hold a security deposit.

The Landlord testified that she sent the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) to the Tenants at the rental unit by registered mail on September 24, 2017. The Notice indicates that \$1,550.00 in rent was unpaid at that time. However, during the hearing, the Landlord testified that it was actually only \$1,050.00 that was unpaid as of that time. However, more rent has accrued since then because the Tenants have paid nothing since July 2017. The Landlord provided oral testimony with respect to rent payments and accruals. This evidence is summarized as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
August 1, 2017	Rent Due	\$500.00	\$0.00	\$500.00
	August NSF charge	\$25.00	\$0.00	\$525.00
September 1, 2017	Rent Due	\$500.00	\$0.00	\$1,025.00
	September NSF charge	\$25.00	\$0.00	\$1,050.00
October 1, 2017	Rent Due	\$500.00	\$0.00	\$1,550.00
November 1, 2017	Rent Due	\$500.00	\$0.00	\$2,050.00
December 1, 2017	Rent Due	\$500.00	\$0.00	\$2,550.00
January 1, 2018	Rent Due	\$500.00	\$0.00	\$3,050.00
Total Accrued Balance				\$3,050.00

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants owed \$1,050.00 in past due rent and NSF fees at the time the Notice was sent to them on September 24, 2017. The landlord issued the Notice by mailing it to the rental unit (registered mail) on September 24, 2017, and I find the tenants received Notice on September 29, 2017, 5 days after it was mailed, pursuant to section 90 of the *Act*.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenants did either. As such, I find the Tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of

the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenants owe and have failed to pay \$3,000.00 in past due rent, plus two \$25.00 NSF fees, totalling \$3,050.00.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the tenants to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. In summary, I find the Landlord is entitled to a monetary order in the amount of \$3,150.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,150.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 12, 2018

Residential Tenancy Branch