



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRUDENTIAL POWER PLAY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On December 20, 2017, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) considered the landlord's application for dispute resolution using the Residential Tenancy Branch's direct request process. As the adjudicator did not believe there was sufficient information provided whereby she could make an *ex parte* hearing of this matter, she adjourned the landlord's application to a participatory hearing in her Interim Decision of December 20, 2017.

I have been delegated authority to consider the landlord's application for the following in this participatory hearing:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:12 a.m. in order to enable them to call into this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony, supported by a written Proof of Service document and sworn testimony from the landlord's witness, that he posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at or about 11:00 a.m. on December 5, 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 December 10, 2017.

As was noted in the adjudicator's Interim Decision, the landlord testified that he handed the tenants a copy of the landlord's direct request proceedings, which included the landlord's application for dispute resolution and written evidence, on December 19, 2017. The landlord testified that he handed the tenants copies of the Interim Decision and the Notice of Reconvened Hearing, and additional written evidence, as was required in the Interim Decision, on December 22, 2017. The landlord's witness confirmed that he witnessed the serving of these documents to the tenants. In accordance with sections 88 and 89 of the *Act*, I find that the tenants have been served with the above documents on December 19 and December 22, 2017 as declared by the landlord.

At the commencement of the hearing, the landlord testified that the tenants have not vacated the rental unit and have not paid anything to the landlord since the 10 Day Notice was issued. Consequently, he requested an increase in the monetary award the landlord was seeking for unpaid rent to include an additional \$985.00 for January 2018. As the tenants were clearly aware that rent became due and was not paid for January, I allow the landlord's oral request to amend the amount of unpaid rent sought in this application from \$985.00 to \$1,970.00.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began as a one-year fixed term tenancy on January 1, 2015. At the expiration of the initial term, the tenancy continued on a month-to-month basis. Initial rent was set at \$950.00, payable in advance on the first of each month. The current rent has increased to \$985.00. The landlord continues to hold the \$475.00 security deposit for this tenancy, paid on December 19, 2014.

The landlord's 10 Day Notice identified \$985.00 in unpaid rent owing for December 2017. As noted above, the landlord testified that the tenants have not paid anything towards the December 2017 or January 2018 rent.

Analysis

The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. 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 December 19, 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 tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. Section 26(1) of the *Act* establishes 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, unless the tenant has a right under this *Act* to deduct all or a portion of the rent."

In this case, there is undisputed evidence that the tenants have not paid anything towards their rent for December 2017, and have overheld their tenancy without paying any rent for January 2018. Under these circumstances, I allow the landlord's application for a monetary award of \$1,970.00, for unpaid rent owing for these two months.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' 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 this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenants.

Conclusion

I grant an Order of Possession to the landlord 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 under the following terms, which allows the landlord to recover unpaid rent owing and the filing fee for this application and to retain the tenants' security deposit:

Item	Amount
Unpaid December 2017 Rent	\$985.00
Unpaid January 2018 Rent	985.00
Less Security Deposit	-475.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,595.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: January 12, 2018

Residential Tenancy Branch