



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF-L, MNRL –S, OPR, CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- 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 the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenants acknowledged receipt of evidence submitted by the landlord. The tenants did not submit any documentation for this hearing.

Issue(s) to be Decided

Are the tenants entitled to have the notice set aside? If not, are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlords gave testimony regarding the following facts. The month to month tenancy began on July 1, 2017, with monthly rent set at \$1200.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$600.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on October 6, 2017 to the tenant for \$1200.00 of unpaid rent for October. The landlord testified that the tenant made a payment of \$700.00 on October 25, 2017 and then another payment of \$500.00 on November 3, 2017. The landlord testified that the tenants made a payment of \$700.00 towards Novembers rent. The landlord testified that the tenant still owes \$500.00 for Novembers rent and all of December and Januarys rent. The landlord disputes that an agreement was made that the tenants pay their rent on the third week of the month.

Item	Amount
Unpaid Rent for November	\$500.00
Unpaid Rent for December	1200.00
Unpaid Rent for January	1200.00
Recovery of Filing Fee	100.00
Less Security Deposit	-600.00
Total Monetary Order Requested	\$2400.00

The tenant testified that they had a verbal agreement to pay the rent on the third week of the month. The tenant testified that she acknowledges that she paid the rent late. The tenant testified that she acknowledges that she has withheld paying November's rent in full along with nonpayment for December and January.

Analysis

The tenants stated that the rent was due on the third week of the month despite the written tenancy agreement stating that it was due on the first. In the tenants' own testimony she acknowledged and conceded that she didn't pay October's rent in full until November 3, 2017, long past the three week mark. The tenant failed to provide sufficient evidence that the rent was due in the third week of the month. I do find that the tenants' willfully withheld the rent from November 2017 onward. I also find that the tenants failed to pay their rent in full within five days of being deemed to have received the 10 Day Notices. Although the tenants have made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice, they have failed to provide sufficient evidence or justification to cancel the Notice.

I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, 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.

I am satisfied that the tenants continue to owe the landlord unpaid rent. Although the landlord has not applied to retain the security deposit, using the offsetting provision under Section 72 of the *Act*, I hereby apply the security deposit against the amount of unpaid rent. The landlord testified that if he was granted an order of possession, he would waive January's rent as it is only the third day of the month, as such; January's rent no longer is considered part of the monetary claim.

Conclusion

Unpaid Rent for November	\$500.00
Unpaid Rent for December	1200.00
Recovery of Filing Fee	100.00
Less Security Deposit	-600.00
Total Monetary Order Requested	\$1200.00

The landlord is granted an order of possession and a monetary order for \$1200.00. The landlord may retain the security deposit.

The tenants' application is dismissed in its entirety without 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: January 03, 2018

Residential Tenancy Branch