Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to sections 47 and 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:41 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords' agent (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.

Rules 7.1 and 7.3 of the Residential Tenancy Branch Rules of Procedure provides as follows:

> **The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.**

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to each tenant by way of registered mail on January 08, 2018. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the Application and evidentiary package on January 13, 2018, the fifth day after their registered mailings.

The landlord gave written evidence that a One Month Notice was sent by registered mail to the rental unit on November 16, 2017. In accordance with sections 88 and 90 of the *Act*, I find the One Month Notice was deemed served to the tenants on November 21, 2017, five days after its mailing.

At the outset of the hearing the landlord testified that the tenant is still in the rental unit and sought to increase their monetary claim from $3,150.00 to $4,725.00 to reflect the tenant's failure to pay $1,575.00 in monthly rent for February 2018, the additional month of unpaid rent waiting for this hearing.

Residential Tenancy Branch Rule of Procedure 4.2 states that 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. I allow the amendment as this was clearly rent that the tenants would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord gave written evidence that this tenancy began on February 01, 2017, with a monthly rent of $1,575.00, due on the first day of each month. The landlord testified they continue to retain a security deposit in the amount of $787.50.

A copy of the signed One Month Notice, dated November 15, 2017, with an effective date of December 31, 2017, was included in the landlord's evidence.

The landlord testified that the tenants have not paid the rent since receiving the One Month Notice and is seeking the unpaid rent for December 2017, January 2018 and February 2018 as well as to retain the security deposit and the filing fee for the Application

Analysis

Section 47 of the *Act* establishes that a landlord may issue a One Month Notice to end a tenancy when the landlord has cause to do so.

Section 47(4) and (5) of the *Act* stipulates that a tenant who has received a notice under this section, who does not make an application for dispute resolution within 10 Days after the date the tenant receives the notice, is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the landlord's undisputed evidence and sworn testimony, I find the tenants did not make an application pursuant to section 47(4) of the *Act* within 10 days of receiving the One Month Notice. In accordance with section 47(5) of the *Act*, due to the failure of the tenants to take this action within 10 days, I find the tenants are conclusively presumed to have accepted that the tenancy ended on December 31, 2017, the effective date on the One Month Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by December 31, 2017. As this has not occurred, I find the landlords are entitled to a two (2) day Order of Possession.

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.

Based on the undisputed affirmed testimony, I find that the landlord is entitled to a monetary award in the amount of $4,725.00 for unpaid rent owing for December 2017, January 2018 and February 2018.

Pursuant to 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.

Therefore, as the landlord has been successful in this application, I allow the landlord to recover the filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, to retain the tenants' security deposit and to recover the filing fee for this Application:

Item	**Amount**
Unpaid December 2017 Rent	$1,575.00
Unpaid January 2018 Rent	1,575.00
Unpaid February 2018 Rent	1,575.00
Less the Security Deposit	-787.50
Filing Fee for this application	100.00
Total Monetary Order	**$4,037.50**

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: February 13, 2018

Residential Tenancy Branch