



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 for unpaid rent pursuant to sections 46 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 tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:42 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m.

The landlord's 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 Application for Dispute Resolution (the Application) and evidentiary package were sent to each tenant by way of registered mail on January 06, 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 11, 2018, the fifth day after their registered mailing.

The landlord gave undisputed affirmed testimony that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the tenants' door on December 20, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served to the tenants on December 23, 2017.

At the outset of the hearing the landlord sought to amend their monetary claim from \$4,000.00 to \$3,000.00 due to the fact that \$1,000.00 in monthly rent for March 2018 is not due until March 01, 2018, and this hearing took place on February 16, 2018.

Residential Tenancy 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 allowed this amendment to the landlord's monetary application for the reason given by the landlord and considering that the tenants would not be prejudiced by a reduced monetary claim.

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 authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order

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 current monthly rent of \$1,000.00 that is due on the first day of each month. The landlord testified they currently retain a security deposit in the amount of \$500.00.

A copy of the signed 10 Day Notice dated December 20, 2017, identifying \$1,000.00 in unpaid rent owing for this tenancy with an effective date of December 30, 2017, was included in the landlord's evidence.

The landlord testified that the tenants are still in the rental unit and have not made any payments towards the amount owing on the 10 Day Notice. The landlord submitted that they are seeking an Order of Possession and a monetary award of \$3,000.00 for the unpaid rent owing for December 2017, January 2018 and February 2018.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed evidence and testimony, I find the tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. Due to the failure of the tenants to take either of these actions within five days, I find the tenants are conclusively presumed to have accepted the end of this tenancy by January 02, 2018, the corrected effective date on the 10 Day Notice pursuant to sections 46(5) and 53(2) of the *Act*. In this case, the tenants and anyone on the premises were required to vacate the premises by January 02, 2018. As this has not occurred, I find that the landlord is 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 landlord's undisputed written evidence and affirmed testimony, I find the landlord is entitled to a monetary award of \$3,000.00 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.

As the landlord has been successful in this application, I allow them to recover their \$100.00 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 any occupant 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 the Application:

Item	Amount
Unpaid December 2017 Rent	\$1,000.00
Unpaid January 2018 Rent	1,000.00
Unpaid February 2018 Rent	1,000.00
Less Security Deposit	-500.00
Filing Fee for this Application	100.00
Total Monetary Order	\$2,600.00

The landlord is provided with this Order 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 this Order, this Order 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: February 16, 2018

Residential Tenancy Branch