



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC MNR MNDC FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") to obtain an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated January 9, 2018 ("1 Month Notice"), for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord and the son of the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord and landlord's son were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence were considered. The landlord testified that the Notice of Hearing and application were served on the tenants by registered mail on February 1, 2018, via two separate packages and with each package addressed to the name of the each of the tenants and addressed to the rental unit address. A copy of the registered mail tracking number customer receipts were submitted in evidence and the tracking numbers have been included on the cover page of this decision for ease of reference and marked as 1 and 2. According to the online registered mail tracking website information the registered mail packages were both unclaimed and eventually returned to the sender, even though both tenants continued to occupy the rental unit as of the date of the hearing, February 23, 2018. Based on the above, I find the tenants were deemed served with the Notice of Hearing and application on February 6, 2018. Pursuant to section 90 of the Act, documents served by registered mail are deemed served five days after they are mailed. As the

tenants did not attend the hearing, I find that the landlord's application is undisputed and unopposed by the tenants.

Preliminary and Procedural Matters

Firstly, based on the details of dispute indicated by the landlord in the application I consider the landlord's application to include a request for unpaid rent for February 2018 in the amount of \$2,488.00. Therefore, I have included the request for unpaid February 2018 rent of \$2,488.00 in accordance with section 64(3) of the *Act*.

Secondly, the landlord verbally requested to retain the tenants' security deposit during the hearing if she was so entitled and as a result and pursuant to sections 38 and 67 of the *Act*, if the landlord is entitled to a monetary claim, I will offset any amount with the tenants' security deposit plus any applicable interest under the *Act*.

Thirdly, the landlord confirmed the email addresses at the outset of the hearing. The landlord was advised that the parties would receive the decision by email and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 1 Month Notice?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the first tenancy agreement and the second tenancy agreement were submitted in evidence. The first fixed term tenancy began on September 1, 2016 and eventually on September 1, 2017, a new tenancy agreement was signed between the parties. Originally, the monthly rent was \$2,400.00 per month and increased to \$2,488.00 by agreement of the parties in the second and final tenancy agreement signed between the parties. The tenants paid a security deposit of \$1,200.00 at the start of the tenancy which the landlord continues to hold.

The landlord and the landlord's son confirmed service of the 1 Month Notice by posting to the tenants' door on January 9, 2018 at 4:50 p.m. The 1 Month Notice included an effective vacancy date of February 28, 2018 listed two causes on the 1 Month Notice. The landlord testified that the tenants did not dispute the 1 Month Notice and failed to pay rent for February 2018 and continue to occupy the rental unit.

The landlord testified that over the course of the tenancy, the tenants provided six cheques that could not be cashed due to "Non-Sufficient Funds" ("NSF") as a result the landlord is seeking six \$25 late charges as the rent was late for each of the six months when the rent cheques "bounced" according to the landlord.

The landlord referred to the tenancy agreement addendum that lists a charge of \$35.00 per NSF cheque however the landlord admitted that she later discovered that the maximum amount permitted under the Residential Tenancy Regulation is \$25.00 and as a result, is seeking \$150.00 for six \$25.00 late fees for the NSF cheques.

The landlord is also seeking the recovery of the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord and landlord's son during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants did not dispute the 1 Month Notice within 10 days after being deemed served as having received the 1 Month Notice which pursuant to section 90 of the *Act* is three days after posting to the door which in this matter was January 9, 2018 and results in the deemed service date of January 12, 2018. The effective vacancy date of the 1 Month Notice is listed as February 28, 2018. Section 47 of the *Act* indicates that when tenants do not dispute a 1 Month Notice, they are conclusively presumed to have accepted that the tenancy ends on the effective vacancy date. Therefore, I find the tenancy ends on February 28, 2018. Therefore, I grant the landlord an order of possession pursuant to section 55 of the *Act* effective **February 28, 2018 at 1:00 p.m.**

Claim for unpaid rent and 6 late fees – The landlord testified that the tenants continue to owe \$2,488.00 for unpaid February 2018 and \$150.00 for six late payment charges of \$25.00 for each late payment. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find

that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$2,638.00** comprised of \$2,488.00 in unpaid rent for February 2018 plus \$150.00 for six late payments charges of \$25.00 for each late payment.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*.

The landlord is holding the tenants' security deposit of \$1,200.00 which has accrued \$0.00 in interest. I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit plus \$0.00 in interest as follows:

Unpaid rent for February 2018	\$2,488.00
Six late fees of \$25.00 per late payment (\$25.00 per late fee x 6)	\$150.00
Filing fee	\$100.00
Subtotal	\$2,738.00
<i>(Less tenants' security deposit including \$0.00 interest)</i>	<i>-\$1,200.00</i>
TOTAL BALANCE OWING BY TENANTS TO LANDLORD	\$1,538.00

Given the above, and pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit including \$0.00 in interest of \$1,200.00 from the \$2,738.00 amount owing to the landlord. Therefore, I grant the landlord a monetary order for the balance owing by the tenants to the landlord in the amount of **\$1,538.00**.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective February 28, 2018 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. I find the tenancy ends on February 28, 2018 at 1:00 p.m.

The landlord has established a total monetary claim of \$2,738.00 as indicated above. The landlord has been authorized to retain the tenants' full security deposit including \$0.00 in interest of \$1,200.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$1,538.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 23, 2018

Residential Tenancy Branch