



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR CNR FF OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with applications from both parties:

The landlord applied for:

- an Order of Possession pursuant to section 46 of the *Act* for Unpaid Rent;
- a Monetary Award for unpaid rent pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

The tenants applied for:

- cancellation of the landlord's notice to end tenancy pursuant to section 55;
- a return of the filing fee pursuant to section 72 of the *Act*; and
- an Order for the landlord to comply with the *Act* pursuant to section 62.

Only the landlord, V.G. (the "landlord"), and his wife, J.G. appeared at the hearing. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord explained that a 10 Day Notice End Tenancy for Unpaid Rent was placed on the tenants' door on December 13, 2017. Pursuant to sections 88 & 90 of the *Act*, the tenants are deemed served with this notice on December 16, 2017, three days after its posting.

The landlord said that individual copies of their application for dispute resolution, along with evidentiary packages were sent to the tenants by way of Canada Post Registered Mail on January 15, 2018. Canada Post tracking numbers for each package were provided

to the hearing. Pursuant to sections 88, 89 & 90 of the *Act*, the tenants are found to have individually been served with the landlord's applications and evidentiary packages on January 20, 2018, five days after their mailing.

Following opening remarks, the landlord asked to amend his applications for dispute resolution to reflect unpaid rent which had accrued since his amendments had been sent to the tenants. As the tenants continue to occupy the rental unit, pursuant to section 64(3)(c) of the *Act*, I allow the landlord to amend his applications to reflect unpaid rent for February 2018.

Issue(s) to be Decided

Can the tenants cancel the landlord's Notice to End Tenancy? If not, is the landlord entitled to an Order of Possession?

Can the landlord recover a monetary award?

Are either party entitled to a return of the filing fee?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Undisputed testimony provided to the hearing by the landlord explained that this tenancy began on September 1, 2017. Rent was \$1,000.00 per month, and a security deposit of \$500.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said he was seeking an Order of Possession and a monetary award for unpaid rent which had accumulated throughout the tenancy. The landlord said that the tenants had paid only \$350.00 rent for November 2017, and had failed to pay rent in its entirety for December 2017, as well as January and February 2018.

No submissions were provided to the hearing by the tenants.

Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. While the tenants have made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice disputing the end of tenancy, the tenants failed to attend the hearing to provide any evidence explaining why rent remained unpaid. I find the 10 Day Notice issued to the tenant to be valid and find that it required the tenant to vacate the premises by December 26, 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 tenants. 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. In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award.

The landlord explained that the tenants paid rent of \$350.00 for November 2017 and had failed to pay rent in its entirety for December 2017, along with January and February 2018.

The tenants failed to attend the hearing, and no evidence was submitted by the tenants explaining why rent remained unpaid. I find that the landlord has suffered a loss under this tenancy and pursuant to section 67 of the *Act* I find that the landlord is entitled to receive a monetary award for unpaid rent of \$3,650.00.

As the landlord was successful in his application, he may recover the \$100.00 filing fee from the tenant.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$500.00 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 his application, he may recover the \$100.00 filing fee from the tenants.

Conclusion

I make a Monetary Order of \$3,250.00 in favour of the landlord as follows:

Item	Amount
Partial unpaid rent for November 2017	\$650.00
Unpaid rent for December 2017	1,000.00
Unpaid rent for January 2018	1,000.00
Unpaid rent for February 2018	1,000.00
Return of Filing Fee	100.00
Less Security Deposit	(-500.00)
Total =	\$3,250.00

The landlord is provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenants. Should the tenants fail to comply with this Order, this Order may be enforced as an Order of the Supreme Court of British Columbia.

The tenants' application is dismissed in its entirety.

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 28, 2018

Residential Tenancy Branch