



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application 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*.

Only the landlord, S.D. (the "landlord") attended the hearing by conference call. 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 given to the tenants' on December 5, 2017. A signed proof of service document was submitted to the hearing as part of the landlord's evidentiary package. Pursuant to sections 88 & 90 of the *Act*, the tenants are deemed served with this notice on the same day as its service.

The landlord said that individual copies of his application for dispute resolution, along with evidentiary packages were sent to the tenants by way of Canada Post Registered Mail on January 5, 2018. 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 10, 2018, five days after their mailing.

Following opening remarks, the landlord informed that the tenants had moved out of the rental unit on February 25, 2018 and he stated he no longer required the Order of Possession. The landlord asked to amend his applications for dispute resolution to reflect unpaid rent which had accrued since his application for dispute had been sent to the tenants. As the tenants only recently vacated 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

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

The landlord provided undisputed testimony that this tenancy began on April 15, 2017. Rent was \$1,200.00 per month, and a security deposit of \$1,200.00 was collected at the outset of the tenancy. Upon learning of his mistake in collecting an amount above what is permissible under the *Act*, the landlord returned \$600.00 to the tenants. The landlord said he continues to hold a \$600.00 as a security deposit.

The landlord said that the tenants failed to pay rent for December 2017, as well as for January and February 2018. On December 5, 2017 the landlord served the tenants with a 10 Day Notice for unpaid rent. On February 25, 2018 the tenants vacated the rental unit.

No evidence was submitted to the hearing by the tenants.

Analysis

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 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 \$3,600.00.

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' \$600.00 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 \$3,100.00 in favour of the landlord as follows:

Item	Amount
Unpaid rent for December 2017	\$1,200.00
Unpaid rent for January 2018	1,200.00
Unpaid rent for February 2018	1,200.00
Return of Filing Fee	100.00
Less Security Deposit	(-600.00)
Total =	\$3,100.00

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.

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: March 2, 2018

Residential Tenancy Branch