



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR DR FF

Introduction

This participatory hearing was convened after the issuance of a January 19, 2018 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities; and
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlord, H.G. attended the hearing, while the tenants did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Following opening remarks, the landlord explained that the tenants had vacated the rental unit and he was no longer seeking an Order of Possession.

On January 26, 2018, tenants were individually sent Notices of Hearing by way of Registered Mail. The landlord provided a copy of the Canada Post tracking numbers to the hearing. Pursuant to sections 88 and 90 of the *Act*, the tenants are deemed served on January 31, 2018 with the Notice of Hearing.

At the outset of the hearing the landlord asked to amend his application to reflect unpaid rent of \$2,100.00 for February 2018. As the tenants continued to occupy the rental unit for a time period in February, I will amend the landlord's application under the powers delegated to me by section 64 of the *Act*.

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 explained that this tenancy began on September 1, 2017. Rent was \$2,100.00 per month, and a security deposit of \$1,050.00 paid at the outset of the tenancy, continues to be held by the landlord.

The landlord said that he issued a 10 Day Notice to End Tenancy on January 2, 2018 because the tenants had failed to pay rent when it was due on the 1st of the month. Testimony was provided by the landlord that following the issuance of a 10 Day Notice, the tenants remained in the rental unit until approximately February 6, 2018. The landlord could not identify exactly which day the tenants vacated the suite but noted that he had gone past the property on the 6th and that the tenants' dog was still in the home on that date.

The landlord is seeking a monetary award of \$4,200.00 in respect of the unpaid rent for January and February 2018.

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 his entitlement to his claim for a monetary award.

I accept the landlord's undisputed testimony that rent was not paid and that the tenants remained in the rental unit until approximately February 6, 2018 without paying any rent. Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a Monetary Order of \$4,200.00 for unpaid rent. The landlord testified that rent has not been paid for January and February 2018.

Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$1,050.00 security deposit in partial satisfaction of the Monetary Award.

Conclusion

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

Item	Amount
Unpaid Rent for February 2018	\$2,200.00
Unpaid Rent for January 2018	2,200.00
Less Security Deposit	(-1,050.00)
Return of Filing Fee	100.00
Total Monetary Order	\$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.

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 7, 2018

Residential Tenancy Branch