



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made January 11, 2018: MT; CNR; ERP; OLC

Landlords' Application made January 12, 2018: OPR; MNR; FF

- Amended February 20, 2018, to add: MNDC

Introduction

This matter was scheduled to be heard by teleconference on March 12, 2018, at 11:00 a.m., to consider cross applications. The Tenant applied for an extension of time to file an application to cancel a notice to end tenancy; the cancel a Notice to End Tenant for Unpaid Rent issued January 2, 2018; and for orders that the Landlords comply with the Act, regulation or tenancy agreement and provide emergency repairs to the rental property.

The Landlords applied for an Order of Possession and Monetary Order for unpaid rent and utilities, compensation for loss of revenue; and to recover the cost of the filing fee from the Tenant.

The Landlords attended the Hearing and gave affirmed testimony. This Tenant did not attend the Hearing which remained open for 30 minutes. Therefore, the Tenant's Application is dismissed without leave to reapply.

The Landlord JD testified that he mailed the Notice of Hearing documents to the Tenant at the rental unit, by registered mail, on January 17, 2018. He also testified that he mailed the Landlords' amended Application to the Tenant, by registered mail, on February 20, 2018. The Landlord provided the tracking numbers for both of the documents.

The Landlord JD stated that the Landlords did not receive copies of the Tenant's Application of Dispute Resolution and evidence.

Based on JD's affirmed testimony, I am satisfied that the Tenant was duly served with the Landlords' Notice of Hearing documents. I find that the Tenant was deemed to be served with these documents on January 22, 2018. I am also satisfied that the Tenant was duly served with

the Landlords' amended Application and was deemed to be served with that document on February 25, 2018.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession, a monetary award for unpaid rent and utilities, and compensation for loss of revenue?

Background and Evidence

The Landlords gave the following testimony:

This tenancy began on June 1, 2017. The tenancy agreement is a one year lease, ending on May 31, 2018. Monthly rent is \$1,490.00, due on the first day of each month. Rent does not include the cost of water. The Tenant is responsible for paying for paying one half of the water bill. The Tenant paid a security deposit in the amount of \$745.00 at the beginning of the tenancy.

The rental property is a house with two separate suites. The other suite is presently occupied.

The Landlord MD served the Tenant with the Notice to End Tenancy for Unpaid Rent on January 2, 2018, by posting the Notice to the Tenant's door, with a witness present. The Landlords provided a copy of the proof of service document in evidence.

The Tenant has not paid any of the rent for the months of January, February, and March, 2018. The Tenant also owes her portion of the water bill to and including February 8, 2018, in the amount of \$145.96. The Landlord provided a copy of the municipal invoice for the water bill in evidence.

The Landlord JD stated that the Tenant is also responsible for her portion of the water bill from February 9, to the end of the tenancy, but that he does not have a bill from the municipality yet. He estimated the Tenant's portion of that bill to be approximately \$222.00.

JD testified that the occupant who is living in the other rental unit on the rental property told the Landlord that the Tenant has been moving items out of the rental unit, but has been coming back and forth. JD stated that there are still some of the Tenant's possessions in the rental unit, including food.

JD stated that it is most unlikely that the Landlord will be able to re-rent the rental unit effective April 1, 2018, because the rental unit will require some work before it is ready for new occupants. He asked to amend the Application to include loss of revenue for the month of April, 2018.

The Landlords seek a monetary award as follows:

Unpaid rent for January, 2018	\$1,490.00
Unpaid rent for February, 2018	\$1,490.00
Loss of revenue for March, 2018	\$1,490.00
Loss of revenue for April, 2018	\$1,490.00
Tenant's portion of unpaid water bill to February 8, 2018	\$145.96
Estimated Tenant's portion of water bill after February 8, 2018	<u>\$222.00</u>
TOTAL CLAIM	\$6,327.96

The Landlords acknowledged that they are still holding the security deposit.

Analysis

I accept the Landlords' undisputed affirmed testimony in its entirety.

Further to the provisions of 90(c) of the Act, I find that the Tenant was served with the Notice to End Tenancy effective 3 days after posting it on the Tenant's door, January 5, 2018. The Tenant made an Application to cancel the Notice; however, the Tenant's Application was not made within the strict time limit provided in Section 46 of the Act. Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on January 15, 2018. I find that the Tenant is overholding and that the Landlords are entitled to an Order of Possession.

I further find that the Landlords are entitled to a monetary award for unpaid rent for January, 2018; compensation for loss of revenue for February and March, 2018, and recovery of the Tenant's portion of the water bill up to February 8, 2018.

With respect to the Landlords' request for compensation for loss of revenue for the month of April, 2018, I find that this is pre-mature. It is possible that the Landlords may re-rent the rental unit for April 1, 2018, or for some portion of April, 2018, and therefore the amount of the loss of revenue (if any) has not yet been determined. Likewise, the Tenant's cost for unpaid water after February 8, 2018, has not yet been determined. These portions of the Landlords' claim are dismissed with leave to reapply.

Further to the provisions of Section 72 of the Act, the Landlords may apply the security deposit in partial satisfaction of their monetary award.

The Landlords' Application had merit and I find that they are entitled to recover the cost of the \$100.00 filing fee.

The Landlords are hereby provided with a Monetary Order, calculated as follows:

Unpaid rent for January, 2018	\$1,490.00
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Loss of revenue for February, 2018	\$1,490.00
Loss of revenue for March, 2018	\$1,490.00
Tenant's portion of unpaid water bill to February 8, 2018	\$145.96
Recovery of filing fee	<u>\$100.00</u>
Subtotal	\$4,715.96
Less set off of security deposit	<u><\$745.00></u>
TOTAL	\$3,970.96

Conclusion

The Tenant's Application is **dismissed without leave to reapply**.

The Landlords are at leave to apply for loss of revenue for the month of April, 2018, and recovery of the Tenant's portion of the water utility after February 8, 2018.

I hereby provide the Landlords with an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlords with a Monetary Order in the amount of **\$3,970.96** for service upon the Tenant. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: March 12, 2018

Residential Tenancy Branch