



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNRL FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing (one landlord representative and two tenants). Both parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid ("10 Day Notice") rent mailed to them on January 9, 2018. The tenants confirmed receipt of the landlord's Application for Dispute Resolution ("ADR") and documentary evidence for this hearing sent register mail to them on February 9, 2018. I find the tenants were sufficiently served in accordance with section 88, 89 and 90 of the Act with the landlord's 10 Day Notice ADR and evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary order for unpaid rent? Is the landlord entitled to recover their filing fee?

Background and Evidence

This tenancy began on August 28, 2014 as a six month fixed term tenancy. Over the course of the tenancy, the rental amount was increased. The current rental amount of \$1379.00 was payable on the 1st of each month. The tenants did not pay a security deposit to the landlord. The landlord applied to end the tenancy as a result of the tenants' failure to pay rent. The landlord also sought to recover the unpaid rent amount totalling \$5516.00.

The landlord issued a Notice to End Tenancy for unpaid rent for the month of January 9, 2018. The landlord testified that the tenant did not pay rent of \$1379.00 due on January 1, 2018. The tenants acknowledged that they did not pay \$1379.00 rent in January

2018, February 2018 and March 2018. The landlord also sought to recover rental loss for April 2018 (\$1379.00).

At the outset of this hearing, the tenants testified that they had vacated the rental unit on March 30, 2018. The tenants testified that the landlord was aware that they had vacated the rental unit because the property manager on site witnessed them vacate the rental unit. They submitted that the landlord does not need an Order of Possession as they have vacated the rental unit. They also testified that they should not be required to pay April 2018 rent, as they did not live in the rental unit in April 2018.

The landlord testified that the tenants had not advised any representative for the landlord that they had vacated the rental unit or provided any notice that they intended to vacate the rental unit. The tenants submitted that the landlord issued a notice to end their tenancy and therefore should have known they would vacate the premises – that they were not required to provide notice in these circumstances. The landlord also testified that the property manager on site has been on vacation for most of March 2018 and has not yet returned from vacation: it would not have been possible for the tenants to advise anyone at the rental premises that they were vacating the rental unit.

The landlord sought an Order of Possession based on Unpaid Rent. The tenants testified that they had vacated the rental unit however, the landlord argued that she had no prior notice that the tenants had vacated and was unable to confirm that they had in fact vacated the rental unit. Therefore, the landlord continued to seek an Order of Possession for the rental unit. The landlord provided undisputed testimony that the tenants did not pay the \$1379.00 rent in full for January 2018 after receiving the Notice to End Tenancy. The tenants also did not apply to cancel the Notice to End Tenancy. The tenants testified that they have been looking for a new place to live since they received the landlord's Notice to End Tenancy.

The landlord also applied for a monetary award of \$5516.00 for recovery of their \$100.00 filing fee as well as unpaid rent for the months of January 2018, February

2018, March 2018 and April 2018 as follows,

Item	Amount
Unpaid Rent – January 2018	\$1379.00
Unpaid Rent – February 2018	1379.00
Unpaid Rent – March 2018	1379.00
Rental Loss – April 2018	1379.00

Recovery of Filing Fee for this Application	100.00
Monetary Order Sought by Landlord	\$5616.00

Analysis

The landlord applied for an Order of Possession out of an abundance of caution, as they had not been notified that the tenants had vacated the rental unit. Based on the evidence provided by both parties, the tenants failed to pay the full \$1379.00 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenants did not apply pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. Therefore, in accordance with section 46(5) of the *Act*, as the tenants have not paid the rent outstanding or applied to dispute the notice to end tenancy, the tenants were required to vacate the premises by January 25, 2018. As that has not occurred, and the landlord has not received confirmation that the tenants have vacated the unit and turned over the keys to the unit, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent in January 2018, as well as February 2018 and March 2018. During those months, the tenants resided in the rental unit. The tenants acknowledged in their testimony that they did not pay rent during those 3 months.

The landlord testified that she is unlikely to be in a position to rent the premises for April 2018 as: the first of the month has passed and she was not notified that the tenants had vacated the rental unit until this hearing; and that it is difficult to rent units for mid-month. The landlord also submitted that she does not know the condition of the rental unit to be able to assess when she might be able to re-rent the unit. I find that the landlord is entitled to collect rental loss for April 2018. I accept the landlord's evidence that, prior to the outset of this hearing, the tenants had not advised the landlord that they intended to vacate the rental unit. As the landlord stated, it would have been unnecessary for her to bring this application had she known the tenants intended to move out. Furthermore, I note that the tenants did not move out in accordance with the 10 Day Notice (effective date: January 25, 2018). Finally, the tenants candidly acknowledged that they continued to live in the rental unit until March 30, 2018 and that they did not pay the full rent in January, February or March 2018.

Based on the evidence submitted at this hearing, including the tenants' lack of notice to the landlord so that the landlord could take steps to re-rent the unit for the beginning of April 2018, I find that the landlord is entitled to April 2018 rent in the amount of \$1379.00

a monetary order that includes the landlord's application for unpaid rent and rental loss as follows,

Item	Amount
Unpaid Rent – January 2018	\$1379.00
Unpaid Rent – February 2018	1379.00
Unpaid Rent – March 2018	1379.00
Rental Loss – April 2018	1379.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$5616.00

The landlord is also entitled to recover the \$100.00 filing fee as the landlord was successful in this application.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord in the amount of \$5616.00.

The landlord is provided with this monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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: April 05, 2018

Residential Tenancy Branch