



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FF

Introduction

On February 8, 2018, the Landlord applied for a Direct Request proceeding seeking the following under the Act, regulation, or tenancy agreement:

- An Order of Possession for unpaid rent;
- A Monetary Order for unpaid rent; and
- To recover the filing fee.

On February 13, 2018, the Direct Request proceeding was adjourned to a participatory hearing scheduled for April 18, 2018.

At the start of the hearing, I confirmed that the building manager S.P. was appearing on behalf of the Landlord. The Tenants S.B. and A.A. did not attend the hearing, although it lasted approximately 24 minutes. I waited 10 minutes from the start of the hearing for the Tenants to appear, and then S.P. was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

S.P. testified that she served each Tenant personally with the Notice of Reconvened Hearing package on February 15, 2018. In addition, as reflected in the evidence, each Tenant signed confirming receipt of this package. In accordance with sections 89 and 90 of the Act, I find that the Tenants were deemed served with the Notice of Reconvened Hearing package on February 15, 2018.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

S.P. testified that as per the written tenancy agreement, the tenancy started on January 6, 2018 for a fixed length of time of one year, that rent was \$1,400.00 per month due on the first day of each month, and that a security deposit of \$700.00 was paid. S.P. confirmed that both Tenants moved into the premises on January 6, 2018.

S.P. confirmed that a 10 Day Notice was served by hand to A.A. on February 2, 2018, indicating that \$1,400.00 was due for the month of February 2018. S.P. testified that rent was not paid for February and that the Tenants subsequently paid rent for the month of March 2018, but their rent cheque for the month of April was returned as there were insufficient funds.

S.P. is seeking \$1,400.00 in unpaid rent from the Tenants, which is indicated on a monetary worksheet submitted with the Application, but she also sought to amend the monetary claim at the hearing to add an additional \$1,400.00 in unpaid rent for April 2018.

Analysis

Upon consideration of the evidence before me, I have provided the following Sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

When examining the consistent and undisputed evidence, rent was established to be due on the first of each month. As per Section 26 of the Act, rent was due on this date, and there was insufficient evidence that there was authority under the Act which allowed the Tenants to withhold rent payments. A 10 Day Notice to End Tenancy for Unpaid Rent was served by S.P. on February 2, 2018 for rent outstanding for February 2018, totalling \$1,400.00. Section 46 requires the Tenants to pay the outstanding amount of rent owing within five days of being deemed to receive the notice, which would effectively cancel said notice. Alternately, the Tenants could have disputed the notice within this same five-day time period. In this case, the Tenants did neither, so S.P. proceeded with her application for dispute resolution.

As I have determined that the rent was not paid in full when it was due and that the Tenants did not meet any of the applicable criteria that authorized them to withhold the rent under the Act, I find that the Landlord is entitled to an Order of Possession and a Monetary Order. In the hearing, S.P. requested that her application be amended to include the outstanding rent for the month of April 2018 as well. To confirm that the Tenant's rent was unpaid for April, I asked S.P. to provide proof of the insufficient funds, which she corroborated via a fax that I received at 10:50 AM on April 18, 2018. As such, I grant an Order of Possession and a Monetary Order in the amount of \$2,800.00 for rent owing for the months of February and April 2018.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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 filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Item	Amount
February 2018 Rent	\$1,400.00
April 2018 Rent	\$1,400.00
Recovery of Filing Fee for this application	\$100.00
Total Monetary Award	\$2,900.00

The Landlord is provided with a Monetary Order in the amount of \$2,900.00 in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 20, 2018

Residential Tenancy Branch