



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This participatory hearing was convened after the issuance of a January 31, 2018 Interim Decision of an Adjudicator. The Adjudicator determined that the landlords' application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlords. The Adjudicator reconvened the landlords' application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- a return of the filing fee pursuant to section 72.

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

The landlord, M.M. attended the hearing for the landlords, while the tenant did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Utilities ("10 Day Notice") was sent to the tenant by way of Canada Post Registered Mail on November 7, 2017. A copy of the Canada Post Registered Mail tracking number was provided to the hearing. Pursuant to sections 88 and 90 of the *Act*, I find that the tenant was served with this 10 Day Notice on November 12, 2017, five days after its posting.

On February 2, 2018 and again on March 8, 2018, the tenant was sent a Notice of Hearing by way of Canada Post Registered Mail. The landlord provided a copy of the Canada Post tracking number to the hearing. Pursuant to sections 88 and 90 of the *Act*,

the tenant is found to have been served on February 7, 2018 and March 13, 2018 with the Notice of Hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The tenancy in question began on August 1, 2017. This was a fixed term tenancy set to expire on January 31, 2018. Rent was \$1,250.00 per month and a security deposit of \$625.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord gave testimony that his application for Direct Request was reconvened to a participatory hearing because an Adjudicator determined that it was, “difficult to determine through the Direct Request Proceeding whether the landlord had continued to accept rent after the effective date of the Notice; and, if so, whether those payments were accepted for use and occupation only.”

The landlord explained that the tenant had failed to pay rent in its entirety for November 2017 and eventually only paid \$900.00 on November 23, 2017. He said that rent was paid in total for December 2017 but rent for January and February 2018 were each \$50.00 short. The landlord said that all receipts issued after January 2018 were marked as being for *use and occupancy only*.

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant’s failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 22, 2017. As that has not occurred, I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I find that no waiver was established by the landlords because they issued receipts for *use and occupancy only* after January 2018 and because a second 10 Day Notice was issued to the tenant in February 2018. I find that the tenant's failure to dispute the notice to end tenancy or to pay rent in its entirety after the issuance of the 10 Day Notice did not give rise to a waiver as suggested by the Adjudicator. *Residential Tenancy Policy Guideline #11* states, "if the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established as to; whether the receipt shows the money was received for use and occupancy only, whether the landlord specifically informed the tenant that the money would be for use and occupation only, and the conduct of the parties."

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 landlords to prove entitlement to a claim for a monetary award.

The landlord explained that the tenant had not paid \$350.00 in rent for November 2017 and was short rent of \$50.00 for January and February 2018.

The tenant failed to attend the hearing, and no evidence was submitted by the tenant explaining why rent remained unpaid. I find that the landlords have suffered a loss under this tenancy and pursuant to section 67 of the *Act* I find that the landlords are entitled to receive a monetary award for unpaid rent \$450.00

Using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain a portion of the tenant's \$625.00 security deposit plus applicable interest in partial satisfaction of the monetary award. As the landlords were successful in their application, they may recover the \$100.00 filing fee pursuant to section 72.

Conclusion

I make a Monetary Order of \$550.00 in favour of the landlords as follows:

Item	Amount
Partial unpaid rent for November 2017	\$350.00
Partial unpaid rent for January 2018	50.00
Partial unpaid rent for February 2018	50.00
Recover of Filing Fee	100.00
Total =	\$550.00

The landlords are directed to retain \$550.00 from the tenant's security deposit. The remainder of the security deposit (\$75.00) shall continue to be held in trust by the landlords until it is dealt with at the conclusion of the tenancy in accordance with the *Act*.

I grant an Order of Possession to the landlords effective two days after service of this Order on the tenant. Should the tenant fail to comply with this Order, this Order may be enforced as an Order of the Supreme 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: April 3, 2018

Residential Tenancy Branch