



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This matter commenced by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”). In a written decision dated March 2, 2018, an adjudicator granted the Landlord an order of possession and a monetary order in the amount of \$1,700.00. However, the Tenants applied for a review of the decision and orders, pursuant to section 79 of the *Act*. In a written decision dated March 9, 2018, an arbitrator ordered that a new hearing take place. This is that hearing. The Landlord sought the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities; and
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing in person. The Tenant C.A. attended the hearing on behalf of both Tenants. Both the Landlord and C.A. provided a solemn affirmation at the beginning of the hearing.

Subsequent to the arbitrator’s decision to grant a new hearing, a Notice of Dispute Resolution Proceeding was provided to the Tenants to serve on the Landlord. A copy was also emailed to the Landlord at an address provided. Notes made on the Residential Tenancy Branch case management system indicate that an information officer provided the Landlord with details regarding the new hearing. Case management notes also indicate the Landlord contacted the Residential Tenancy Branch on March 22, 2018, and was advised of the procedure for filing evidence. On April 3, 2018, the Tenants were advised a copy of the Notice of Dispute Resolution Hearing was available for pick-up at the local Service BC office. I find the parties received sufficient notice of the dispute resolution hearing.

In addition, the Landlord testified the evidence upon which she intended to rely was served on the Tenants by registered mail on February 24, 2018. Although unable to recall the specific date of receipt, C.A. confirmed receipt of the Landlord’s evidence in early March 2018.

On behalf of the Tenants, C.A. testified the documentary evidence to be relied upon at the hearing was served on the Landlord by registered mail on April 6, 2018. C.A. testified that he contacted Canada Post and was advised the package was delivered on April 9, 2018, although the Landlord did not pick it up. Residential Tenancy Branch Rule of Procedure 3.15 requires a respondent to submit evidence to the Residential Tenancy Branch and serve it on the other party "not less than seven days before the hearing." The testimony of C.A. confirmed the Tenants' documentary evidence was served on the Landlord contrary to the Rules of Procedure. The Landlord testified she did not receive it. Accordingly, I find the evidence is excluded from consideration.

The parties were provided with a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord submitted a copy of the signed tenancy agreement between the parties into evidence. It confirmed the tenancy began on November 1, 2017. Rent in the amount of \$800.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$400.00, which the Landlord holds.

The Landlord testified rent was not paid when due on January 1 and February 1, 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 8, 2018 (the "10 Day Notice"). The Landlord testified the 10 Day Notice was served on the Tenants by attaching a copy to the door of the Tenants' rental unit on February 8, 2018. At that time, rent in the amount of \$1,600.00 was outstanding. A copy of the 10 Day Notice was submitted into evidence, as was a signed Proof of Service document confirming service in the manner described.

In addition, the Landlord testified the Tenants did not pay rent when due on March 1 or April 1, 2018, and that the Tenants continue to occupy the rental unit. The Landlord testified that rent in the amount of \$3,200.00 remains outstanding.

In reply, C.A. testified there was an agreement in effect whereby rent would be reduced for work performed. He stated that his calculations determined that the Tenants owed only \$140.00 for rent for January 2018. However, C.A. testified that a \$140.00 electronic payment was rejected by the Landlord.

With respect to the non-payment of rent in February, March, and April 2018, C.A. testified that the Tenants tried to pay rent but their attempts were rejected by the Landlord. C.A. also testified that he has been saving these rent payments pending the outcome of my decision.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord sought an order of possession. In this case, the Landlord testified, and I find, that the Tenants were served with the 10 Day Notice by posting a copy to the door of the rental unit on February 8, 2018. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenants are deemed to have received the 10 Day Notice on February 11, 2018. Pursuant to section 46(4) of the *Act*, the Tenants had until February 16, 2018, to pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution. As C.A. acknowledged rent has not been paid as alleged, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, pursuant to section 46(5) of the *Act*. As a result, the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

Further, the Landlord sought a monetary order for unpaid rent. Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent. In this case, C.A. submitted that the Tenants had a right to deduct a portion of rent, pursuant to an agreement with the Landlord. While the

Landlord agreed there was an agreement, she stated there was a discrepancy in the hours worked and that no rent payments have been received in 2018. I find there is insufficient evidence before me of the specific terms of the agreement between the parties. In any event, the parties testified, and I find, that rent has not been paid for the months of January, February, March, and April 2018. Although there was a discrepancy in the evidence concerning the payment of rent in January 2018, there was no satisfactory explanation provided for the non-payment of rent in February, March, and April 2018. I find the Landlord is entitled to a monetary award in the amount of \$3,200.00 for unpaid rent. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee, and that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I grant the Landlord a monetary order in the amount of \$2,900.00, which has been calculated as follows:

Item	Amount
Unpaid rent:	\$3,200.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$400.00)
TOTAL:	\$2,900.00

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,900.00. This order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 11, 2018

Residential Tenancy Branch