



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("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, pursuant to section 72 .

Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the Application. The tenants did not submit any written evidence for this hearing.

The tenants acknowledged receipt of the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on February 2, 2018. In accordance with section 88 of the *Act*, I find the tenants were duly served with the 10 Day Notice on February 2, 2018.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began in May of 2012. Rent is set at \$750.00 per month, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$325.00.

The landlord testified that the tenants had partially moved out on April 1, 2018, and he requires an Order of Possession as the tenants left their belongings behind, and he does not have vacant possession. Both parties acknowledged that the landlord and the tenants had signed a mutual agreement for this tenancy to end on March 31, 2018. The tenants testified that they were unable to remove all their personal belongings as the landlord had changed the locks. The landlord testified that he had changed the locks on April 1, 2018, the last date of the tenancy, and he has never had an issue with the tenants retrieving their personal belongings. The tenants testified in the hearing that they had no storage for their belongings, and therefore could not retrieve their belongings from the landlord. The tenants testified that although they did sign the mutual agreement, they did so under coercion by the landlord.

The landlord issued the 10 Day Notice on February 2, 2018 as the tenants failed to pay outstanding rent. The tenants acknowledged in the hearing that they have not paid the outstanding rent for February 2018 or March 2018, or any portion of rent for the month of April 2018. The landlord is requesting \$2,250.00 in outstanding rent for this period.

Analysis

Section 26 of the Act, in part, states as follows:

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.

The tenants did not dispute the fact that they failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have 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 failure of the tenants to take either of the above actions within five days led to the end of this tenancy on February 12, 2018, the corrected effective date on the 10 Day Notice.

In this case, this required the tenants and anyone on the premises to vacate the premises by February 12, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

The tenants did not dispute the fact that they failed to pay any rent for the months of February 2018 through to April 2018 as indicated in the landlord's application. Whether or not the tenants' belongings remained in the rental unit after April 1, 2018, there is undisputed sworn testimony that this tenancy was to end on March 31, 2018, and that the landlord had changed the locks on April 1, 2018, preventing the tenants from further accessing the suite or their belongings.

Section 31 of the *Act* states as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

By changing the locks on April 1, 2018, before the tenants had fully vacated the suite and removed their belongings, and without waiting for a decision by an Arbitrator or director at the Residential Tenancy Branch about whether or not he is entitled to an Order of Possession, I find the landlord failed to comply with sections 31 and 57 of the *Act*. Accordingly I find the landlord ended the tenancy on April 1, 2018, and is not entitled to a full month of unpaid rent.

I find that the tenants did overhold in the rental unit beyond March 31, 2018 for one day. For this reason and in accordance with section 57 and paragraph 72(2)(a) of the *Act*, I find that the landlord is entitled to \$25.00 for overholding for the month of April 2018. (\$750.00 rent/30 days * 1 day). I find the landlord is entitled to a monetary order of \$1,500.00 for February and March 2018 rent plus \$25.00 for the month of April 2018.

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

The landlord continues to hold the tenants' security deposit in the amount of \$325.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Conclusion

I find that the landlord's 10 day notice is valid and effective as of February 12, 2018.

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.

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

I issue a \$1,300.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, 1 day of overholding by the tenants for April 2018, and also allows the landlord to recover the filing fee for this application while retaining the tenants' security deposit in partial satisfaction of their monetary claim.

Item	Amount
Unpaid Rent for February and March 2018	\$1,500.00
Overholding Rent Owed to the Landlord for April 2018(\$750.00/30 days = \$25)	25.00
Filing Fee	100.00
Less Security Deposit	-325.00
Total Monetary Order	\$1,300.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 13, 2018

Residential Tenancy Branch