

## **DECISION**

Dispute Code            OPR, MNRL, FFL

### Introduction

This decision pertains to the Landlords' application for dispute resolution made on March 15, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlords seek the following relief:

1. an order of possession for unpaid rent;
2. a monetary order for money owed or compensation for damage or loss; and,
3. a monetary order granting recovery of the filing fee.

The Landlords and the Tenants attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord (G.G.) was assisted by an interpreter, a family member.

The Landlords testified that the Tenants were served with the Notice of Dispute Resolution Proceeding on or about March 18, 2018, and the Tenants confirmed receipt of the package. I am satisfied on the basis of the testimony that the Tenants were served in accordance with section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issue of this application will be considered in my decision.

### Issues

1. Are the Landlords entitled to an order of possession for unpaid rent?
2. Are the Landlords entitled to a monetary order for money owed or compensation for damage or loss?
3. Are the Landlords entitled to a monetary order granting recovery of the filing fee?

### Background and Evidence

The tenancy agreement was oral, and no documentary evidence regarding the terms of the agreement were submitted into evidence by either party. I note that the standard terms for a tenancy agreement apply under the Act, even when the parties only have an

oral agreement. The Landlords testified that the tenancy commenced sometime in 2013, when the Tenants (then the owners of the property) sold the house to their friends, the Landlords. The previous owners then became new tenants, and a written tenancy agreement was felt unnecessary because of the parties' longstanding friendship. The monthly rent was \$1,400.00, due on the first of the month. The Landlord (R.G.) testified that they considered the rent's due date to be flexible, and that the Tenants were routinely permitted to pay rent up to a week after the first. The Landlord testified that the rent "has always been fourteen hundred dollars, never any other amount."

In response, the Tenants testified that the rent was initially \$1,000.00 per month, due on the first of the month. At some point in the previous years, the rent was increased to \$1,100.00, and again increased to \$1,400.00 in February 2018. The Tenant (B.K.) testified that the Landlords promised B.K. a fixed monthly rent of \$1,000.00 for the rest of B.K.'s life, but increased the rent (to \$1,400.00) in an effort to get B.K. to move out.

The Tenants did not pay, and the Landlords did not ask for, either a security deposit or a pet damage deposit.

The Landlords testified that, and submitted a copy into evidence, that they issued a Two Month Notice for Landlord's Use of Property, with an effective date of May 31, 2018. The Landlords testified that this notice was served by the Landlords' son, who served it in person to the Tenants on February 18, 2018.

On March 8, 2018, the Landlords served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by way of putting a one copy through the mail slot of the rental unit and then attaching a second copy to the front door. The Landlords testified that the Tenants have not paid rent for March 2018 and for April 2018, and that they are owed a total of \$2,800.00 in unpaid rent.

The Tenants testified and acknowledged that they have not paid rent for March 2018 and April 2018. The Tenants disagreed with the amount owed, testifying that it should be for a total of \$2,200.00, as per the previous rental rate of \$1,100.00. Tenant S.K. testified that they offered to pay the Landlords \$1,100.00 in satisfaction of the rent for March 2018, but that the Landlords declined this offer.

The Landlords also claim compensation in the amount of \$7,350.00 for future repair costs to damaged tiles of a perimeter drain. The Landlord R.G. testified that the Tenants owned a big Husky dog. The dog ran around the backyard, digging holes, and running along the perimeter of the house, causing damage to the drain tiles. The Landlords

testified that the dog had lived there for approximately 6 to 7 years, including a few years before the house was sold to the Tenants. The Landlord R.G. testified that the house was likely built in the 1940s, and that no work was ever done on the drain in the past. Finally, the Landlords testified that no condition inspection report was completed at the start of the tenancy. The Landlords submitted a one-page quote from a contracting company regarding "Old drain tile repair" in the amount claimed. No photographs were submitted into evidence.

In response, the Tenant S.K. denied that the dog had access to the drain, that it was kept in the backyard only, and that the repairs to the drain are only necessary because of the age of the property. Tenant S.K. disputed the Landlords' argument that a Husky dog could, in fact, cause the damage alleged.

The Landlords testified that, and the Tenants confirmed, that all but one of the Tenants (B.K.) have since moved out, along with the dog.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### ***Claim for Order of Possession and Unpaid Rent***

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. Pursuant to section 46 of the Act, the Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains that the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Taking into consideration all the evidence and unchallenged testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving their claim regarding unpaid rent for March 2018 and April 2018.

Section 55 (1) (b) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and

the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 55 of the Act to the unchallenged testimony regarding the Tenants' failure to pay rent for March 2018 and April 2018, and regarding the Tenants' failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the Landlords.

However, there is insufficient evidence before me to determine that the amount of rent owed for March 2018 and April 2018 is \$2,800.00. The Landlords submit that the rent is \$1,400.00, whereas the Tenants submit that the rent is \$1,100.00. The Landlord failed to provide any documentary evidence supporting their claim that the rent was \$1,400.00 per month, and in the absence of any supporting evidence from either party, I find that the Landlords have failed to prove on a balance of probabilities that the rent is \$1,400.00.

Furthermore, if the rent amounts have changed and the Landlords did use the correct Notices to raise the rent, these would have been illegal rent increases. Given the insufficient evidence, I am left with doubts regarding the amount actually owed, and therefore dismiss the Landlords' application for a monetary order, with leave to reapply.

Nevertheless, the Tenant admitted to *not* paying any rent for these two months and as such, the tenancy must end.

### ***Claim for Damage to Drain***

The Landlords seek compensation for damage or loss with respect to the property.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due, and to establish the value of the loss or damage.

In determining whether compensation is due, an arbitrator must determine whether:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of, or value of, the damage or loss; and,

4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 32 (3) of the Act requires a tenant to “repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.” If a tenant does not comply with this section, a landlord may seek an order for compensation under section 67 of the Act.

The Landlords testified that the drain was damaged by a dog, and submitted into evidence a quote from a contractor for repair to the drain. However, in the absence of a copy of an inspection condition report, photographs, or any or any other documentation regarding the claimed damaged, there is insufficient evidence before me regarding the basis for the claim in order for me to find that there was a loss due to a breach of the Act by the Tenants, or that their dog caused such damage.

For this reason, I dismiss this aspect of the Landlords’ claim, without leave to reapply.

I dismiss the Landlords’ claim for recovery of the filing fee, without leave to reapply.

### Conclusion

I grant an order of possession for unpaid rent. This order must be served on the Tenants and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords have leave to reapply for a monetary claim for unpaid rent.

The Landlords’ claims for property damage are dismissed without leave to reapply.

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 27, 2018

---

Residential Tenancy Branch