



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On April 4, 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 April 16, 2018, the Direct Request proceeding was adjourned to a participatory hearing scheduled for May 8, 2018.

At the start of the hearing, I confirmed that the Landlord attended the hearing, and that R.B. and A.R. attended the hearing and advised that they were agents for the Landlord. The Tenant attended the hearing on his own behalf. All in attendance provided a solemn affirmation.

The agents for the Landlord testified that they served the Tenants the Notice of Reconvened Hearing package on April 16, 2018 via registered mail, and the Tenant confirmed receipt of this package. In accordance with sections 89 and 90 of the Act, I find that the Tenants were served with the Notice of Reconvened Hearing package.

Upon reviewing the evidentiary submissions, the Tenant's evidence did not appear to meet the requirements of Rule 3.15 of the Rules of Procedure. When asked, the Tenant advised that he mailed this package to the Landlord by registered mail some time last week, but he was unsure and he did not have a receipt. Furthermore, the Landlords did not receive this package. As I am not satisfied that the Tenant's evidence was served in accordance with the Rules of Procedure, I have not considered this evidence in my

decision. However, the Tenant did advise that the pictures that were included had been provided to the Landlord in August 2017.

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

The Landlord stated that the tenancy started on August 1, 2017 as a month to month tenancy. Rent was established at \$1,500.00 per month; however, the tenancy agreement did not specify the day that rent was due. The Landlord testified that there was an understanding with the Tenant that rent was due on the first of each month. A security deposit of \$750.00 was also paid.

The Tenant confirmed these details; however, he stated that after signing the tenancy agreement, he realized that it was a month to month tenancy, whereas he wanted a fixed term of one year. He advised the Landlord of this and the Landlord stated that she would correct it. The Tenant also added that the Landlord instructed him to pay his \$750.00 security deposit to the previous tenant. As well, the Tenant testified that he understood that his first rent payment was due on August 1, 2017 and that rent was due in each subsequent month on the first day of each month. Both parties agreed that the Tenant paid rent by going into his financial institution and transferring money to the Landlord's account.

The Tenant stated that when he took possession of the rental unit, it was not in a suitable condition as the previous tenants did not paint, they left garbage, and the grass was in poor condition. He stated that he called the Landlord to advise her of this and she asked him to clean up the property; however, he advised her that he could not do this for free. He submitted that he had a verbal "kind of" agreement with the Landlord allowing him to make repairs and that she would reimburse him. He stated that he confirmed with the previous tenants that this was a practice that the Landlord also allowed them to do, and that they deducted \$250.00 per month off their rent. He asked the Landlord if his rent could also be reduced in lieu of repairs; however, the Landlord stated that the rent must be paid in full on the day it is due and then expenses would be reimbursed.

The Tenant stated that he advised the Landlord that the grass needing cutting and she told him to find a lawnmower. He purchased one for \$200.00 and then he reduced September's rent by \$100.00. He advised that he paid October's rent in two installments, but reduced the rent by \$100.00 again due to the cost of the lawnmower. The Tenant submitted that only two of the elements on the stove worked when he moved in, but it stopped working entirely in December. When he called the Landlord about this issue, she asked if he could wait until January; however, he could not wait. He advised her that a replacement stove cost \$900.00, that \$500.00 would be deducted from December rent, that \$400.00 would be deducted from January rent, and that the Landlord authorized this. He stated that he was owed \$3,500.00 for other jobs he completed on the rental property and that the Landlord advised him that he would be reimbursed after January 1, 2018.

The Landlord stated that the Tenant viewed the property in July and that if he was satisfied of its condition, he should give the damage deposit to the previous tenant. She advised the Tenant that if there were any concerns after moving in, he should advise her and she would hire a company to make the repairs. She stated that she needs to know the costs involved and would not hire the Tenant to do the work. She submitted that the Tenant phoned constantly in September regarding needing a lawnmower and she advised him to purchase one, reduce the cost from the rent, and then she would keep the lawnmower after the end of the tenancy. She also stated that the cost of the stove could be deducted from the rent in December; however, the Tenant advised that he would deduct \$500.00 from December rent and that in January, the Tenant advised that he was not adequately compensated for the stove so he would deduct the balance from January rent. The table below outlines the amounts paid for rent and the dates the rent was paid.

Amount Paid	Date
\$1,500.00	July 31
\$1,400.00	September 1
\$900.00	October 2
\$500.00	October 2
\$1,500.00	November 1
\$1,000.00	December 2
\$1,110.00	January 30
\$1,500.00	February 28

The Landlord advised that March rent was not paid, that she never gave consent for the Tenant to withhold March rent, and that she also hired a property management company in March. The agents for the Landlord testified that they served the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") to the Tenants by registered mail on March 20, 2018.

The Tenant stated that he attempted to contact the Landlord in January 2017 but she did not return his calls for two months. He then stated that he did not pay March 2018 rent and she finally called him on March 10, 2018, but as he was unable to speak with her, the Landlord had a conversation with the Tenant's wife. The Tenant testified that his wife did not "make any deals" with the Landlord. He then received an email from the Landlord stating that a property management company would be taking over handling the affairs of the rental property. He stated that he spoke with both agents with respect to the Notice and why he did not pay the rent but they did not tell him anything or answer his questions. He then advised that he was afraid to pay the property management company as he did not know who they were, that it was his belief that the Landlord was required to notify him of who this property management company was, and that the Landlord would not answer his calls anymore. He submitted that he had a verbal agreement with the Landlord to do everything around the house, that she was not honest, and that the property management company that she hired is fraudulent. He also stated that he did not dispute the Notice and he did not pay April or May 2018 rent either.

Analysis

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

Section 26 of the Act states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the Act, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the Act allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Notice is conclusively presumed to be

accepted, the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 55 of the Act allows the Landlord to be granted an Order of Possession should the Tenants' Application be dismissed and the Notice complies with the Act.

Section 67 of the Act allows a Monetary Order to be awarded for damage or loss when a party does not comply with the Act.

During the hearing, the Landlord and Tenant agreed that rent was due on the first day of each month, that rent was to be paid in full each month, and that any expenses would be reimbursed after. While this was not adhered to every month, there is no evidence before me that there was written, or even verbal consent to withhold March, April, or May rent. Pursuant to the Act, below are the only conditions in which the Tenants may deduct money from the rent:

1. The Tenants have an Arbitrator's decision allowing the deduction;
2. The Landlord illegally increased the rent;
3. The Landlord has overcharged for a security or pet damage deposit;
4. The Landlord refuses the Tenants' written request for reimbursement of emergency repairs; or
5. The Tenants have the Landlord's written permission allowing a rent reduction.

The Tenant stated that he did not pay the property manager after receiving the Notice because he did not trust them. However, when I asked the Tenant why he did not pay the rent to his Landlord through his financial institution as he had been doing since the tenancy started, he stated that he did not feel like she was being honest and he wanted reimbursement for his expenses.

As the undisputed evidence is 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's Notice is valid, and she is entitled to an Order of Possession and a Monetary Order. In the hearing, the Landlord requested that her application be amended to include the outstanding rent for the months of April and May 2018 as well. As such, I grant an Order of Possession and a Monetary Order in the amount of \$4,500.00 for rent owing for the months of March, April, and May 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 **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
March 2018 Rent	\$1,500.00
April 2018 Rent	\$1,500.00
May 2018 Rent	\$1,500.00
Recovery of Filing Fee for this application	\$100.00
Total Monetary Award	\$4,600.00

The Landlord is provided with a Monetary Order in the amount of \$4,600.00 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: May 15, 2018

Residential Tenancy Branch