



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *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 their filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided witnessed written evidence supported by sworn testimony that the landlord posted the 10 Day Month Notice on the tenants' door on May 3, 2018. Based on this undisputed evidence, I find that the tenants were deemed served with this Notice in accordance with sections 88 and 90 of the *Act* on May 6, 2018, the third day after its posting. The landlord provided witnessed written evidence supported by sworn testimony that they sent both tenants individual copies of the landlord's dispute resolution hearing package and their written evidence by registered mail on May 23, 2018. They provided copies of the Canada Post Tracking Numbers and Customer Receipts to demonstrate this registered mailing. I find that the tenants were deemed served with these packages in accordance with sections 88, 89 and 90 of the *Act* on May 28, 2018, the fifth day after their registered mailings.

The landlord's Monetary Order Worksheet requested a monetary award of \$7,900.00 for unpaid rent owing for the following months, plus the recovery of the landlord's \$100.00 filing fee.

Item	Amount
Unpaid November 2017 Rent	\$1,200.00
Unpaid December 2017 Rent (\$1,200.00 - \$500.00 = \$700.00)	700.00
Unpaid January 2018 Rent	1,200.00
Unpaid February 2018 Rent	1,200.00
Unpaid March 2018 Rent	1,200.00
Unpaid April 2018 Rent	1,200.00
Unpaid May 2018 Rent	1,200.00
Total Monetary Order Originally Requested	\$7,900.00

As the landlord testified that the tenants have failed to pay any rent for June 2018, the landlord requested a further amount in unpaid rent be added to the landlord's application for a monetary award. As the tenants would clearly realize that they had failed to pay rent for this subsequent month and in accordance with the powers delegated to me, I accepted the landlord's oral request to amend the amount of the monetary award sought in this application to reflect the additional month of unpaid rent that has become due since the landlord submitted the application.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on or about October 1, 2017. The landlord testified that monthly rent was set at \$1,200.00, payable in advance on the first of each month. The landlord testified that she understood that the landlord continued to hold the tenants' \$600.00 security deposit paid when this tenancy began.

The landlord provided written evidence and sworn testimony that since November 1, 2017, the only rent paid by the tenants toward this tenancy was a \$500.00 payment made in December 2017.

Analysis

The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenants have not made 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 tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by May 16, 2018. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

In this case, there is undisputed evidence that the tenants have only paid \$500.00 towards their rent from November 1, 2017 until the present. Under these circumstances, I allow the landlord's application for a monetary award of \$9,100.00, for unpaid rent owing at this time.

Although the landlord's application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$600.00 security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

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 from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent owing and the filing fee for this application and to retain the tenants' security deposit:

Item	Amount
Unpaid November 2017 Rent	\$1,200.00
Unpaid December 2017 Rent (\$1,200.00 - \$500.00 = \$700.00)	700.00
Unpaid January 2018 Rent	1,200.00
Unpaid February 2018 Rent	1,200.00
Unpaid March 2018 Rent	1,200.00
Unpaid April 2018 Rent	1,200.00
Unpaid May 2018 Rent	1,200.00
Unpaid June 2018 Rent	1,200.00
Less Security Deposit	-600.00
Filing Fee	100.00
Total Monetary Order	\$8,600.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: June 18, 2018

Residential Tenancy Branch