



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

I have been delegated authority to consider the landlord's Application for Dispute Resolution pursuant to the Residential Tenancy Act (the *Act*), for the following in this hearing:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his 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 1:43 P.M. in order to enable them to call into this teleconference hearing scheduled for 1:30 P.M. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he handed the tenants copies of the Dispute Resolution Package including the Notice of Hearing, and written evidence, on May 8, 2018. The landlord had no witness to this but, testified that he remembered the incident well as the male tenant had said they were going to burn down the house after they had stayed there for 3 months for free.

At the commencement of the hearing, the landlord testified that the tenants have not vacated the rental unit and have not paid full rent to the landlord since the 10 Day Notice was issued. Consequently, he requested an increase in the monetary award the landlord was seeking for unpaid rent to include an additional \$1,100.00 for May 2018. As the tenants were clearly aware that rent became due and was not paid in full for

May, I allow the landlord's oral request to amend the amount of unpaid rent sought in this application from \$1,800.00 to \$2,900.00.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?
- Is the landlord entitled to a monetary award for unpaid rent pursuant to section 67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

Background and Evidence

There is no written tenancy agreement. The landlord gave affirmed evidence that this tenancy began as a month to month tenancy on August 1, 2014. Initial rent was set at \$1,900.00, payable in advance on the first of each month and there have been no rent increases since. There was no security deposit paid for this tenancy.

The landlord gave affirmed testimony that he hand delivered a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenants at their door on April 24, 2018.

The landlord's 10 Day Notice identified \$1,800.00 in total for unpaid rent owing for the months of March and April of 2018. The landlord testified that the tenants have not paid the full May 2018 rent and, that \$1,100.00 remains owing for May. The landlord testified that the tenants are on social assistance and partial rent payments were received from the BC Government directly.

Analysis

Policy Guideline 12 (12) confirms the authority of the arbitrator to make an order that a document has been sufficiently served for the purposes of the Act based on section 71 (2) (b) of the Act. In doing so the arbitrator must consider procedural fairness and prejudice to the affected party.

Sections 71 (1) and 89 (1) (e) of the RTA allow me to make an order that a document that was not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of the Act.

In an application brought by a landlord, the onus is on the landlord to ensure that all required materials filed are in accordance with the prescribed criteria as to form and content and, that all such material has been properly served on the respondent tenant(s). If the landlord cannot establish that all documents meet the standard necessary to proceed with the hearing, and were properly served the application may be adjourned or dismissed, with or without leave to apply in accordance with Policy Guideline 12 (16).

In accordance with sections 88 and 90 of the *Act*, and in the absence of any evidence to the contrary, I find that the tenants were served with the 10 Day Notice on April 24, 2018, as affirmed by the landlord even though there is no evidence of the personal service from a witness.

In accordance with sections 88 and 89 of the *Act*, and in the absence of any evidence to the contrary, I find that the tenants have been served with the Dispute Resolution Package including the Notice of Hearing, and written evidence on May 8, 2018 as affirmed by the landlord even though there is no evidence of personal service from a witness.

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 4, 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. Section 26(1) of the *Act* establishes that “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.”

In this case, there is undisputed evidence that the tenants have not paid their rent in full for the months of March and April of 2018, and have overheld their tenancy without paying full rent for May 2018. Under these circumstances, I allow the landlord's application for a monetary award of \$2,900.00, for unpaid rent owing for these three months.

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:

Item	Amount
Unpaid March 2018 Rent	\$700.00
Unpaid April 2018 Rent	1,100.00
Unpaid May 2018 Rent	1,100.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,000.00

The landlord is provided with an Order 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 the

Order it 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: June 6, 2018

Residential Tenancy Branch