



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

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;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlord served the tenants with the notice of hearing package via personal service on October 13, 2018. Both parties also confirmed the landlord served the tenants with the submitted documentary evidence by placing it in the tenants' mailbox. The tenants did not submit any documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

At the outset, it was discussed at length that the landlord has issued and served multiple 10 Day Notices. As a result the landlord is relying on the 10 Day Notice dated October 2, 2018 which was served by posting on the rental unit door. The tenants stated that they understood and had no issues.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated April 1, 2018. The monthly rent is \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 and a pet damage deposit were paid.

The landlord seeks an order of possession and a monetary order for \$3,960.00 which consists of:

| | | | |
|------------|------------------|------------|----------------|
| \$60.00 | Unpaid Utilities | | |
| \$3,900.00 | Unpaid Rent, | \$900.00 | September 2018 |
| | | \$1,500.00 | October 2018 |
| | | \$1,500.00 | November 2018 |

The landlord claims that the tenants were served with a 10 Day Notice October 2, 2018 by posting it to the rental unit door on October 2, 2018. It states in part that the tenants failed to pay rent of \$2,400.00 that was due on October 1, 2018 and provides for an effective end of tenancy date of November 4, 2018.

The landlord stated that after the 10 Day Notice dated October 2, 2018 was served the tenants have failed to pay any rent as of the date of filing the application for dispute on October 11, 2018.

The tenants have confirmed receipt of the 10 Day Notice dated October 2, 2018 and provided affirmed testimony that because of personal issues were unable to pay any rent as claimed by the landlord. The tenants confirmed that since being served with the 10 Day Notice dated October 2, 2018, no rent has been paid.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

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.

I accept the undisputed affirmed evidence of both parties and find that the tenants were properly served with the 10 Day Notice dated October 2, 2018 by posting it to the rental unit door. Both parties confirmed in their direct testimony that the tenants failed to pay rent as claimed by the landlord totalling, \$3,900.00. Both parties also confirmed in their direct testimony that unpaid utilities are owed to the landlord. However, the landlord has not provided any further details of the total utility arrears. The tenants confirmed that utility arrears are over \$100.00 as they have mailed to the landlord a payment for over \$100.00 for unpaid utilities. Neither party is able to confirm payment. As such, I am satisfied that the landlord has established a claim for unpaid utilities of \$60.00. If payment is received by the landlord, both parties may deduct this amount from the total monetary order issued. On this basis, the landlord has established a claim for an order of possession for unpaid rent. The order of possession will be effective 2 days after being served.

As for the monetary claim, I find that the landlord has established a total monetary claim of \$3,960.00 for unpaid rent/utilities as claimed based upon the tenants' direct testimony.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$4,060.00.

These orders must be served upon the tenants. If the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and 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: November 20, 2018

Residential Tenancy Branch