



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNRL-S OPR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent or utilities;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent and for damage to the rental unit;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72 of the *Act*; and
- authorization to apply the tenants' security deposit against the monetary claim.

While the landlord's agent, R.B. (the "landlord") attended the hearing by way of conference call the tenants did not. The landlord who attended was given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

The landlord gave undisputed testimony that a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was posted on the tenants' door on October 13, 2018. I find that in accordance with sections 88 & 90 of the *Act*, the 10 Day Notice was served to the tenants on October 16, 2018, three days after its posting. A copy of the 10 Day Notice was provided to the hearing as part of the landlord's evidence package.

The landlord explained that on November 8, 2018 the tenants were sent individual copies of the Landlord's Application for Dispute and evidentiary packages ("dispute resolution hearing package"). The Canada Post tracking numbers were provided as evidence during the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's dispute resolution hearing and evidentiary packages on November 13, 2018, five days after their mailing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Can the landlord recover a monetary award and retain the tenants' security deposit?

Is the landlord entitled to a return of the filing fee?

Background and Evidence

The landlord gave undisputed testimony that the tenancy in question began in June 2013. The landlord said he was unsure of an exact move-out date, but said he suspected the tenants abandoned the rental unit in "mid-October 2018." Rent was \$2,680.85 per month and a security deposit of \$850.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord said that in addition to an Order of Possession, he was seeking a monetary award of \$17,974.62 for unpaid rent. The landlord explained a 10 Day Notice was placed on the front door of the rental home on October 13, 2018 and that the tenants did not dispute this notice. When asked why he sought such a large monetary award, the landlord described previous attempts that had been made to work with the tenants to pay the outstanding rent; however, he said these attempts had proved futile and the promises made by the tenants to pay the outstanding rent were not upheld. As part of his evidentiary package, the landlord supplied a detailed ledger outlining the outstanding rent that remained unpaid. This ledger showed that some rent remained outstanding from 2016, 2017 and a significant amount of rent for 2018 was unpaid.

Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice. The tenants have not made an 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 his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by October 26, 2018, the corrected effective date of the 10 Day Notice. As some questions remain outstanding related to possession of the rental unit, 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.

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. In this case, the onus is on the landlord to prove his entitlement to their claim for a monetary award.

Based on the undisputed testimony of the landlord, I find that the landlord is entitled to a Monetary Order of \$17,974.62 for unpaid rent. The landlord provided undisputed testimony and written evidence was submitted with the evidentiary packages supplied to the hearing demonstrating that rent was not paid for a significant portion of 2018 and some rent remained outstanding for 2017 and 2016. I accept this uncontested evidence offered by the landlord.

Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' \$850.00 security deposit in partial satisfaction of the monetary award. As the landlord was successful in his application, he may recover the \$100.00 filing fee pursuant to section 72.

Conclusion

I am granting the landlord an Order of Possession to be effective two days after notice is served to the tenants. If the tenants do not vacate the rental unit within the two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a Monetary Order of **\$17,224.62** in favour of the landlord as follows:

Item	Amount
Rental Arrears	\$17,974.62
Less Security Deposit	(-850.00)
Filing Fee	100.00
Total Monetary Award	\$17,224.62

The landlord is provided with formal Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: December 11, 2018

Residential Tenancy Branch