



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on December 14, 2018. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided testimony. The Tenants did not attend the hearing. The Landlord testified that she sent the application package, along with supporting evidence to the Tenants on November 8, 2018, by registered mail. I find the Tenants are deemed to have received this package on November 13, 2018, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?

2. Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent, in the amount of \$1,400.00, is due on the first day of each month, and that she holds a security deposit of \$700.00.

The Landlord stated that the Tenants have stopped paying rent many months ago and now owe a lot of back rent. The Landlord stated that she posted a copy of the 10 Day Notice to End Tenancy (the Notice) to the door of the rental unit on September 11, 2018. The Notice indicated that as of July 2018, the Tenants owed \$12,600.00 in back rent. The Landlord testified that the Tenant has not paid any money since they issued the Notice. The Landlord stated that the Tenants have paid and owe the following amounts:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
October 1, 2017	Rent Due	\$1,400.00	\$0.00	\$1,400.00
November 1, 2017	Rent Due	\$1,400.00	\$0.00	\$2,800.00
December 1, 2017	Rent Due	\$1,400.00	\$0.00	\$4,200.00
December 15, 2017	Rent Payment		\$950.00	\$3,250.00
January 1, 2018	Rent Due	\$1,400.00	\$0.00	\$4,650.00
January 7, 2018	Rent Payment		\$1,400.00	\$3,250.00
February 1, 2018	Rent Due	\$1,400.00	\$0.00	\$4,650.00
March 1, 2018	Rent Due	\$1,400.00	\$0.00	\$6,050.00
April 1, 2018	Rent Due	\$1,400.00	\$0.00	\$7,450.00
May 1, 2018	Rent Due	\$1,400.00	\$0.00	\$8,850.00
June 1, 2018	Rent Due	\$1,400.00	\$0.00	\$10,250.00
July 1, 2018	Rent Due	\$1,400.00	\$0.00	\$11,650.00
August 1, 2018	Rent Due	\$1,400.00	\$0.00	\$13,050.00
September 1, 2018	Rent Due	\$1,400.00	\$0.00	\$14,450.00
October 1, 2018	Rent Due	\$1,400.00	\$0.00	\$15,850.00
November 1, 2018	Rent Due	\$1,400.00	\$0.00	\$17,250.00
December 1, 2018	Rent Due	\$1,400.00	\$0.00	\$18,650.00
Total Accrued Balance				\$18,650.00

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the Tenants owed past due rent at the time the 10 Day Notice was issued. The Landlord served the 10 Day Notice to the Tenant by posting it to the door of the rental unit on September 11, 2018, for \$12,600.00 in unpaid rent. Pursuant to section 88 and 90 of the *Act*, I find the Tenants are deemed to have received the 10 Day Notice on September 14, 2018, the 3rd day after it was posted.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. The evidence before me indicates that the Tenants did not pay the total balance outstanding within 5 days of being served with the 10 Day Notice. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence to demonstrate that the tenant owes and has failed to pay \$18,650.00 in past due rent.

The Landlord requested that they be able to retain the security deposit of \$700.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$18,650.00
Other:	
Filing fee	\$100.00
Less:	

Security Deposit currently held by Landlord	(\$700.00)
TOTAL:	\$18,050.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$18,050.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 17, 2018

Residential Tenancy Branch