



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD; OPR, MNR, MNSD, FF
TENANT: CNR, ERP, FF, MNDC, PSF, RR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent, to retain the security deposit and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notice to End Tenancy for Unpaid rent and if successful; for the Landlord to do emergency repairs, provide services and facilities agreed to in the tenancy agreement, for compensation under the Act, regulations and tenancy agreement, for a rent reduction and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenants were done by personal delivery on November 23, 2018 in accordance with section 89 of the Act.

This matter was set for hearing at 11:00 a.m. on this date. The Tenants failed to attend the hearing.

Residential Tenancy Branch Rules of Procedure, section 10.1, provides:

10.1 Commencement of the dispute resolution proceeding

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of an appearance by the Tenants by 11:15 a.m., the Tenants' application is abandoned and dismissed with out leave to reapply.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is the Landlord entitled to retain the security deposit?

Background and Evidence

This tenancy started on July 1, 2018 as fixed term tenancy, but as the tenancy agreement was not signed the tenancy is deemed to be a verbal month to month tenancy. Rent is \$1,900.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$950.00 at the start of the tenancy. No condition inspection report was completed at the start of the tenancy.

The Landlord said he served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated November 4, 2018. He served the Notice on November 4, 2018 by personal delivery and by posting it on the door of the Tenants' rental unit. The Effective Vacancy date on the Notice is November 15, 2018. The Landlord said the Tenants have abandoned the rental unit and he is requesting an Order of Possession and a monetary order for unpaid rent.

The Landlord continued to say that the Tenants have unpaid rent of \$3,500.00 on the 10 Day Notice to End Tenancy dated November 4, 2018 and there is unpaid rent for December 2018 of \$1,900.00. The Landlord requested to recover the unpaid rent and to retain the Tenant's security deposit as partial payment of the rent.

The Landlord also requested to recover the filing fee of \$100.00.

Analysis

Section 26(1) says 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.

I accept the Landlord's testimony there is unpaid rent of \$3,500.00 up to and including November, 2018 in the amount of \$3,500.00. In additions I accept the Landlord's

testimony that the Tenants have additional unpaid rent for December, 2018 in the amount of \$1,900.00. The total amount of unpaid rent is \$ 5,400.00. Consequently, I find for the Landlord and award the Landlord a monetary claim for unpaid rent of \$5,400.00.

Further, I find that the Tenants have not paid the overdue rent and have not been successful in cancelling the 10 Day Notice to End Tenancy for Unpaid Rent; therefore I find pursuant to section 55 (2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect December 18, 2018.

As the Landlord has been successful in this matter, he is also entitled to recover from the Tenants the \$100.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38(4) and s. 72 of the Act to keep the Tenants' security deposit in partial payment of the rent arrears. The Landlords will receive a monetary order for the balance owing as following:

	Rent arrears:	\$5,400.00	
	Recover filing fee	\$ 100.00	
	Subtotal:		\$5,500.00
Less:	Security Deposit	\$ 950.00	
	Subtotal:		\$ 950.00
	Balance Owing		\$ 4,550.00

Conclusion

An Order of Possession effective December 18, 2018 and a Monetary Order in the amount of \$4,550.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenants: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

The Tenants' application is dismissed without leave to reapply.

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 18, 2018

Residential Tenancy Branch