



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACLEAN HOMES (GRANT LIMITED) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD OPM FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on December 13, 2018 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for unpaid rent or utilities;
- an order allowing the Landlord to retain the security deposit and/or pet damage deposit;
- an order of possession based on a mutual agreement to end a tenancy; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by J.M., who was accompanied by a witness, T.C. Both J.M. and T.C. provided affirmed testimony. The Tenants did not attend the hearing.

On behalf of the Landlord, T.C. testified the Application package was served on the Tenants by registered mail at the rental address. Tracking information was provided by T.C. in support. Both J.M. and T.C. advised that the Tenants confirmed receipt. In the absence of evidence to the contrary, and pursuant to section 71 of the *Act*, I find the above documents are sufficiently served for the purposes of the *Act*.

On behalf of the Landlord, J.M. and T.C. were given 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.

Preliminary and Procedural Matters

At the beginning of the hearing it was noted that the Landlord submitted an updated monetary order worksheet, which was received at the Residential Tenancy Branch on January 17, 2019, 11 days before the hearing. However, the Application was not amended. As a result, J.M. and T.C. were advised they could withdraw the monetary aspect of the claim with leave to reapply, or proceed based on the original request. J.M. confirmed the Landlord wished to proceed with the Application and not pursue the additional claims.

In addition, J.M. confirmed that the Landlord is the agent of the landlords named on the tenancy agreement submitted into evidence. J.M. is the agent of the named Landlord.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to retain the security deposit and/or pet damage deposit?
3. Is the Landlord entitled to an order of possession based on a mutual agreement to end a tenancy?
4. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties, signed on September 20, 2018, was submitted into evidence. It confirmed the tenancy began on October 1, 2018. Also submitted into evidence was a Mutual Agreement to End a Tenancy, signed on September 30, 2018 (the "Mutual Agreement"), in which the parties agreed to end the tenancy on October 31, 2018. Rent in the amount of \$1,500.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$750.00, which the Landlord holds.

The Landlord's claim was set out in the Application. First, the Landlord claimed unpaid rent for September 26-30, 2018 (\$250.00). T.C. testified the parties agreed the Tenants could move into the rental unit early and pay pro-rated rent of \$250.00. In addition, T.C. testified that rent was not paid when due on December 1, 2018, and January 1, 2019. Rent in the amount of \$3,250.00 is currently outstanding.

The Landlord also requested an order of possession based on the Mutual Agreement. However, J.M. testified the Tenants have made promises to move out but continue to occupy the rental unit.

The Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

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

With respect to the Landlord's claim for unpaid rent, section 26 of the *Act* confirms 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 the *Act* to deduct all or a portion of the rent.

In this case, I find the parties agreed to end the tenancy on October 31, 2018. However, the Tenants continue to occupy the rental unit. I find the Tenants did not pay rent when due as claimed by the Landlord. Therefore, I find the Landlord is entitled to a monetary award of \$3,250.00 for unpaid rent (\$250.00 + \$1,500.00 + \$1,500.00).

With respect to the Landlord's request for an order of possession, section 44(1)(c) confirms a landlord and a tenant can agree to end a tenancy in writing. In this case, the Landlord relied on the signed Mutual Agreement. I find the Tenants are over holding and the Landlord is entitled to an order of possession based on the Mutual Agreement, which will be effective two (2) days after service on the Tenant.

Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. In addition, I order that the Landlord may retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,600.00, which has been calculated as follows:

Claim	Amount allowed
Unpaid rent:	\$3,250.00
Filing fee:	\$100.00
LESS security deposit:	(\$750.00)
TOTAL:	\$2,600.00

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$2,600.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: January 29, 2019

Residential Tenancy Branch