



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO VANCOUVER HOUSING
CORPORATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNRL-S OPC**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent and for a breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to obtain a return of all or a portion of a security deposit pursuant to section 38; and
- authorization to recover the filing fee pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:15 a.m. to enable the tenants to call into this hearing scheduled for 11:00 a.m.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure*, this hearing was conducted in the absence of the tenant.

The landlord testified that she served each of the tenants with the Application for Dispute Resolution on December 19, 2018 by registered mail. Tracking numbers were provided for each of the packages, however both packages were returned unclaimed. I find that despite the packages being unclaimed, the Applications for Dispute Resolution

are deemed served five days after sending by registered mail, on December 24, 2018, in accordance with section 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for the tenant's non-payment of rent and breaching a material term of the tenancy?

Is the landlord able to recover unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of a monetary order?

Is the landlord entitled to recover the filing fee from the tenant?

Preliminary Matter

At the commencement of the hearing, the landlord asked for permission to increase the monetary claim to include an additional month of unpaid rent for January 2019. I have allowed the landlord's request pursuant to section 64(3)(c) of the *Act* and rule 4.2 of the *Rules of Procedure*.

Background and Evidence

The landlord provided a copy of the tenancy agreement signed on May 17, 2017 stating that this month to month tenancy began on June 1, 2017 with monthly rent set at \$1,300.00 payable on the first day of each month. On May 17, 2017, the landlord collected a security deposit in the amount of \$650.00 which is still held by the landlord. The rent was increased on June 1, 2018 to \$1,352.00 per month and remains at this rate. A copy of the rent increase form was provided as evidence.

The landlord provided the following undisputed testimony. The tenants have been consistently late in paying rent. The landlord issued letters to the tenants about the late payment of rent on August 29, 2018, October 16, 2018 and November 19, 2018. The third letter stated that consistent late payment of rent is a material breach of the tenancy agreement and arrears now include November rent and parking for total arrears in the amount of \$1,536.00. Attached to each of the letters is a ledger showing when rent was due and when it was paid. A monetary order worksheet was also included in the landlord's evidence indicating arrears for the month of October and unpaid rent for November and December of 2018.

On November 19, 2018, the landlord served the tenants with a One Month Notice to End Tenancy for Cause ("Notice") by posting it to the door of the tenants' rental unit.

The landlords filed into evidence a copy of the Notice as well as a witnessed proof of service document.

Analysis

Section 90 of the *Act* provides that because the Notice was served by posting the Notice to the tenants' door, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the *Act*, I find that the tenants are deemed to have received the Notice on November 22, 2018.

Sections 47(3)(4) and (5) of the *Act* state:

(3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(4) A tenant may dispute a Notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the Notice.

(5) If a tenant who has received a Notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and
- (b) must vacate the rental unit by that date.

Based on undisputed testimony of the landlord, and the documents provided, I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Although the tenants had the opportunity to do so, they did not file an application to dispute the Notice within 10 days, by December 2, 2018, or attend the scheduled Dispute Resolution Hearing. Since the tenants have not filed for dispute resolution, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must move out of the unit.

As December 31, 2018, the effective date of the Notice has already passed, I find that the landlord is entitled to an order of possession, effective two days after service upon the tenant, pursuant to section 55 of the *Act*.

Monetary Order

The landlord's testimony and evidence show that the tenant is in arrears of rent for October, November, December and January. I accept the landlord's undisputed evidence that the tenant owes the following amounts.

Item	Amount
October 2018 arrears	\$160.00
Rent for November 2018	\$1,372.00
Rent for December 2018	\$1,372.00
Rent for January 2019	\$1,372.00
Grand Total	\$4,276.00

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit in the amount of \$650.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord retain the entire security deposit in partial satisfaction of the monetary claim.

Item	Amount
Monetary Order	\$4,276.00
Filing fee	\$100.00
Less security deposit	(\$650.00)
Total Monetary Order	\$3,726.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$3,726.00**. The tenant must be served with this Order as soon as possible. Should the tenants fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority 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