



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord and her agents attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend or submit any documentary evidence. The landlord's agents (the landlord) stated that both tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on December 11, 2018 and have provided the Canada Post Customer Receipt Tracking numbers in direct testimony (noted on cover of Decision). I accept the undisputed affirmed testimony of the landlord and find that the tenants have been properly served as per sections 88 and 89 of the Act. The landlord stated that the packages are "unclaimed" as of the date of this hearing. Although the tenants have not claimed or attended the hearing, I find pursuant to section 90 of the Act that both tenants are deemed served.

The landlord also filed an amendment to the monetary claim increasing the claim from \$11,200.00 to \$11,450.00. The landlord stated that the tenants were each served with the amendment by posting it to the rental unit door on December 22, 2018. The

landlord provided undisputed affirmed testimony that on the following day of December 23, 2018 the landlord attended and found the posted amendments removed. I accept the undisputed affirmed evidence of the landlord and find that the tenants have been sufficiently served with the amendment and are deemed served as per section 90 of the Act.

During the hearing the landlord clarified the monetary claim stating that it is for \$8,050.00. As the monetary claim has been reduced, I find that there is no prejudice to the tenants and the hearing shall proceed based upon the reduced amount.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?
- Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that there was no signed tenancy agreement, but that monthly rent is \$3,100.00 and that a \$1,500.00 security deposit was paid.

The landlord seeks an order of possession and a monetary order for unpaid rent, for money owed or compensation for damage or loss of \$8,050.00 which consists of:

\$1,500.00	Unpaid Rent, November 2018
\$3,100.00	Unpaid Rent, December 2018
\$3,100.00	Unpaid Rent, January 2019
\$250.00	Recovery of City Fine, re: Snow Removal February 26, 2018
\$100.00	Recovery of Filing Fee

The landlord provided a copy of a 10 Day Notice issued for Unpaid Rent (the 10 Day Notice) dated November 9, 2018 which states in part that the tenants failed to pay rent of \$1,900.00 that was due on November 1, 2018. The 10 Day Notice sets out an effective end of tenancy date of November 19, 2018. The landlord provided undisputed

affirmed testimony that the tenants were served with the 10 Day Notice by posting it to the rental unit door on November 9, 2018.

The landlord stated that subsequently the tenants made a partial payment of \$400.00 on November 21, 2018 for which a receipt was issued with notice to the tenants that it was received for “payment accepted for use and occupation only not reinstating tenancy.” The landlord stated that no further rent payments have been made by the tenants.

The landlord also claimed that the tenants failed to remove snow as required and suffered a fine issued by the city of \$250.00 as shown in the submitted documentary evidence regarding the charge and fine issued.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

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, I accept the undisputed evidence of the landlord that the tenants were served with the 10 Day Notice dated November 9, 2018. The tenants are deemed served as per section 90 of the Act on November 12, 2018. As such, the effective end of tenancy date is corrected from November 19, 2018 to November 22, 2018.

I find based upon the undisputed affirmed testimony of the landlord that the tenants failed to pay all of the rent as claimed for November 2018 and have subsequently failed to pay any rent for December 2018 and January 2019.

I also find that the landlord suffered a loss of \$250.00 that was imposed for a snow removal bylaw by the city.

The landlord has established a claim for an order of possession for unpaid rent. I also find that the landlord has established a claim for monetary compensation as claimed for \$7,950.00. The order of possession to be effective 2 days after being served upon the tenants.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

The landlord also applied to retain the \$1,500.00 security deposit in partial satisfaction of this claim. As such, I authorize the landlord to retain the \$1,500.00 and grant the landlord a monetary order for the balance.

Conclusion

The landlord is granted an order of possession for unpaid rent.
The landlord is granted a monetary order for \$6,550.00.

These orders must be served upon the tenants. Should the tenants fail to comply, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 15, 2019

Residential Tenancy Branch