



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Landlord F.K. (the "landlord") and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that he posted the notice of dispute resolution package on the tenant's door on December 24, 2018. The tenants testified that they received the notice of dispute resolution package a little after December 25, 2018 but could not recall on what date. I find that the tenants were sufficiently served with this package, for the purposes of this *Act*, in accordance with section 71 of the *Act*.

Preliminary Issue

The landlords' original application claimed unpaid rent in the amount of \$2,271.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased by \$1,950.00.

Section 4.2 of the Rules states that 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlords' application to include a monetary claim for all outstanding rent totaling \$4,221.00.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Are the landlords entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlords' claims and my findings are set out below.

Both parties agreed that this tenancy began prior to the current landlords taking ownership of the subject rental property in 2015.

Both parties agree that the monthly rent in the amount of \$975.00 is payable on the first day of each month; however, the tenants testified that the landlord raised the rent to \$975.00 contrary to the *Act*. Both parties agreed that the rental rate of \$975.00 has been paid by the tenants since January 2018. Both parties agreed that the tenants pay rent in cash and the landlord does not issue receipts for rent paid.

The tenants testified that they paid the previous landlord a security deposit in the amount of \$450.00 and a pet damage deposit in the amount of \$450.00 and that neither of these deposits have been returned to them. The landlord testified that he did not know if the tenants paid deposits to the previous landlord.

The landlord testified that on December 3, 2018 he posted a 10 Day Notice to End Tenancy for Unpaid Rent effective December 13, 2018 (the "10 Day Notice"). The tenants confirmed receipt of the 10 Day Notice on December 6, 2018. The 10 Day Notice states that the tenants failed to pay rent in the amount of \$2,271.00 that was due on November 1, 2018.

The tenants testified that that they did not file an application to cancel the 10 Day Notice with the Residential Tenancy Branch and did not pay the amount claimed on the 10 Day Notice.

The landlord testified that the tenants only paid \$654.00 in rent for October 2018. The tenants testified that they paid October's rent in full.

The landlord testified that the tenants did not pay any rent for November 2018. The tenants testified that they paid November's rent in full.

The landlord testified that the tenants did not pay any rent for December 2018. The tenants testified that they had a rat problem and the landlord would not pay for an exterminator, so they hired one and deducted the cost (\$175.00) from their rent and tried to pay the landlord \$800.00 towards December's rent but the landlord would not accept a partial payment. The landlord testified that he would have accepted a partial payment but the tenants had no money to give him. The landlord testified that he was never made aware of a rat problem.

Both parties agreed that the tenants did not pay any rent for January and February 2019.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenants by posting a copy on the tenants' door. I find that service of the 10 Day Notice was effected on the tenants on December 6, 2018, in accordance with sections 88 and 90 of the *Act*.

I make the following findings. The tenants failed to pay the outstanding rent claimed on the 10 Day Notice within five days of receiving the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46 of the *Act* is December 16, 2018. I find that the corrected effective date of the 10 Day Notice is December 16, 2018.

In this case, this required the tenants to vacate the premises by December 16, 2018, as that has not occurred, I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$975.00 on the first day of each month. While the tenants alleged that the landlord raised the rent above the amount permitted under the *Act*, they did not file an application disputing the January 2018 rent increase and testified that they have been paying rent in the amount of \$975.00 since January 2018. I decline to consider whether or not the rent increase was in accordance with the *Act* since that question was not properly before me and the landlord had no notice of that claim.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlord's claim for outstanding rent from October 2018 to February 2019 and considering the tenants' testimony that they paid rent in full in October and November 2018, the burden of proving that rent was not paid in cash, as claimed by the tenants, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

In these circumstances the landlords' failure to provide receipts for cash payments made during this tenancy significantly impairs their ability to prove that the tenants did not pay a portion of rent. The landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate his claim that the tenants did not pay full rent in October and November 2018. I therefore find that the landlord has not proved his claim for October and November 2018 rent and so his claim for rent for those months fails.

Section 33(1) of the *Act* states that "emergency repairs" means repairs that are

- (a)urgent,
- (b)necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c)made for the purpose of repairing
 - (i)major leaks in pipes or the roof,
 - (ii)damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii)the primary heating system,
 - (iv)damaged or defective locks that give access to a rental unit,
 - (v)the electrical systems, or
 - (vi)in prescribed circumstances, a rental unit or residential property.

Section 33(3) of the *Act* states that a tenant may have emergency repairs made only when all of the following conditions are met:

- (a)emergency repairs are needed;

(b)the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c)following those attempts, the tenant has given the landlord reasonable time to make the repairs.

Section 33(5) of the *Act* states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a)claims reimbursement for those amounts from the landlord, and

(b)gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

The tenants did not submit any evidence to show that an exterminator was required or that one was hired. The tenants did not submit any evidence proving that they provided the landlord with a written account of the emergency repairs. I find that the tenants have not proved, on a balance of probabilities, that they were entitled to deduct any amount for emergency repairs from rent in December 2018.

As both parties agreed that no rent was paid for December 2018, January 2019 and February 2019 I find that, pursuant to section 67 of the *Act*, the tenants owe the landlord \$2,925.00 in unpaid rent.

I accept the tenants' testimony that they paid the previous landlord a \$450.00 security deposit and a \$450.00 pet damage deposit. In cases where the landlord changes, the new landlord bears the burden of refunding the tenants' damage deposit at the end of the tenancy, even if the previous landlord did not transfer the deposits to the new landlord.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlords are entitled to retain the tenants' entire security and pet damage deposits in the amount of \$900.00 in part satisfaction of their monetary claim for unpaid rent against the tenants.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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 to the landlords under the following terms:

Item	Amount
December 2018 rent	\$975.00
January 2019 rent	\$975.00
February 2019 rent	\$975.00
Filing Fee	\$100.00
Less deposits	-\$900.00
TOTAL	\$2,125.00

The landlords are provided with this Order in the above terms and the tenants 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 delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 04, 2019

Residential Tenancy Branch