



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, CNR, OLC, FFT, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

And the tenants’ application for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. 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.

The landlord testified that the tenants were personally served the notice of dispute resolution package and supporting evidence on December 22, 2018. I find that the tenants were deemed served with this package on December 22, 2018, in accordance with section 89 of the Act.

Rule 7.3 of the Rules of Procedure states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any evidence or submissions from the tenant, I order that the tenant's application is dismissed without leave to reapply.

The landlord's application proceeded in the tenants' absence.

Amendment

Pursuant to sections 64 and 68 of the Act, I order that the Notice and application for dispute resolution be amended to allow the landlord to claim for outstanding rent for the dates of January 1 to 8, 2019.

Issues to be Decided

Is the landlord entitled to an Order of Possession for non-payment of rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to recover her filing fee for this application from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's evidence and my findings are set out below.

The landlord submitted evidentiary material including:

- A copy of a residential tenancy agreement which was signed by the landlord on August 20, 2018 and the tenants on August 23, 2018, indicating a monthly rent of \$2,550.00, due on the first day of each month for a tenancy commencing on October 1, 2018. The tenants paid a security deposit in the amount of \$1,275.00 to the landlord, which the landlord continues to hold.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") dated December 5, 2018 for \$2,550 in unpaid rent due on December 1, 2018, with a stated effective vacancy date of December 22, 2018.

The landlord testified that she served the Notice on the tenants by registered mail on December 6, 2018. The landlord provided a copy of the Canada Post customer receipt containing the tracking number to confirm this mailing. Pursuant to sections 89 & 90 of the Act, the tenant is deemed served with the landlord's Notice on December 11, 2018, five days after its posting by Canada Post registered mail.

The landlord testified that the tenants have yet to make any payment on the amount claimed, and that they moved out of the rental property on January 8, 2019. They did not pay any rent for the month of January.

She asked to amend her claim so as to claim for a pro-rated amount of January's rent (eight days). She testified that she was able to re-let the rental property on January 15, 2019.

Analysis

I have reviewed all relevant documentary evidence provided by the landlord.

Order of Possession

Section 55 of the Act reads:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with [section 52](#) [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Notice meets the form requirements of section 52. Accordingly, as I have already dismissed the tenants' application to cancel the notice, the Act requires that I grant the landlord an order of possession. I hereby make such an order.

Monetary Order

On review of the evidence and consideration of the testimony of the landlord, I find that the tenant was obligated to pay monthly rent in the amount of \$2,550.00 per month. I

accept the landlord's evidence that the tenant did not pay that amount for the month of December 2018. The tenant is obligated to pay rent both by the tenancy agreement and by section 26 of the Act.

Section 7(1) of the Act reads:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Accordingly, I order that the tenants pay the landlord \$2,550.00 for unpaid rent in December 2018.

Additionally, I accept the landlord's evidence that the tenant occupied the rental premises until January 8, 2019, and did not pay any rent for the month of January. I find that the tenants had the benefit of residing at the rental property without the burden of compensating the landlord.

Accordingly, I find that the landlord is entitled to a monetary order to compensate her for this. The daily rental rate of rent in the month of January is roughly \$82.25 (\$2,550.00/31 days). As the tenants occupied the rental property for eight days in January, I order, pursuant to section 7 of the Act, that the tenants pay the landlord \$658.00 for this time.

As the landlord has been successful in her application, I also order that the tenants reimburse to her the filing fee of \$100.00, pursuant to section 72(1) of the Act.

In accordance with the offsetting provisions of section 72(2) of the Act, I allow the landlord to retain the full security deposit of \$1,275.00 in partial satisfaction of the monetary award.

In summary, I find the landlord is entitled to a monetary order as follows:

December 2018 rent	\$2,550.00
January 1 to 8, 2018 rent	\$658.00
Filing fee	\$100.00
Security deposit credit	-\$1,275.00
Total	\$2,033.00

Conclusion

I dismiss the tenants' application, without leave to reapply.

I grant an Order of Possession to the landlords effective two days after service of this Order on the tenants. Should the tenant fail to comply with this Order, this Order may be filed in, and enforced as an Order of, the Supreme Court of British Columbia.

I order the landlord to retain the full security deposit of \$1,275.

Pursuant to sections 67 and 72 of the Act, I find that the landlords are entitled to a monetary order in the amount of \$2,033. Should the tenants fail to comply with this order, this order may be filed in, and enforced as an Order of, the Small Claims Division of the Provincial 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 7, 2019

Residential Tenancy Branch