



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing is a continuation of a direct request application made by the landlord pursuant to the *Residential Tenancy Act* (the “**Act**”) for:

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

This matter came before Adjudicator Doyon on January 2, 2019, who found that the tenants were duly served with the Notices of Dispute Resolution Proceeding. However, the direct request application was adjourned to this hearing, due to the following findings:

I find that the tenants’ address on the residential tenancy agreement submitted by the landlord does not match the tenants’ address on the Application for Dispute Resolution, the 10 Day Notice, or any other documentation submitted with the Application for Dispute Resolution.

I find that this discrepancy in the tenants’ address raises a question that can only be addressed through a participatory hearing.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 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 Reconvened Hearing, the interim decision, and all other required documents on January 3, 2018. I find that

the tenants were served with this package on January 3, 2019, in accordance with section 89 of the Act.

Preliminary Issue – Amendment of claim

Per Rule of Procedure 4.2, I order that the landlord's claim be amended to include a claim for rental arrears owed by the tenants as of February 1, 2019.

Issue(s) to be Decided

Is the landlord entitled to:

- an order of possession for non-payment of rent;
- a monetary order for unpaid rent; and
- authorization to recover the filing fee for this application from the tenants?

Background and Evidence

Per Adjudicator Doyon's decision, the landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and one of the tenants on September 30, 2018, indicating a monthly rent of \$1,400.00, due on the first day of each month for a tenancy commencing on October 1, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**October Notice**") dated October 10, 2018, for \$1,400.00 in unpaid rent. The October 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of October 21, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the October Notice was personally served to the tenants at 4:00 pm on October 10, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "**November Notice**") dated November 3, 2018, for \$1,400.00 in unpaid rent. The November Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of November 13, 2018;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the November Notice was personally served to the tenants at 4:00 pm on November 3, 2018; and
- A Direct Request Worksheet.

The application for dispute resolution, the October Notice, the November Notice, and the Direct Request Worksheet all set out the address of the rental unit in question as having a the designation of “basement” before the street address. The tenancy agreement does not have this designation, and instead lists the street number followed by the words “2-Bedroom.” The spelling of the name of the street the rental unit is located on slightly differs between the tenancy agreement and the other documents.

In addition to the documents set out above, the landlord submitted into evidence a copy of an agreement signed by one of the tenants and the landlord, dated October 10, 2018, in which the tenant agrees that, if the October 2018 rent is not paid by October 12, 2018, she will vacate the rental unit, and that the landlord may retain the damage deposit if the rent is not paid.

The landlord testified:

- That the address on the tenancy agreement is incorrect, and that the address listed on the other documents is correct (both for spelling and for the designation of “basement”).
- The tenants remain in the rental unit.
- The tenants paid a \$700.00 damage deposit to him, which he retains.
- The tenants have rental arrears as follows:

	Amount Due	Amount Paid	Date Paid	Balance Owing
October 2018 Rent	\$1,400.00	\$0.00	-	\$1,400.00
November 2018 Rent	\$1,400.00	\$1,400.00	22-Oct-18	\$0.00
December 2018 Rent	\$1,400.00	\$1,400.00	22-Nov-18	\$0.00
January 2019 Rent	\$1,400.00	\$933.00	22-Dec-18	\$467.00
February 2019 Rent	\$1,400.00	\$933.00	22-Jan-19	\$467.00
Total				\$2,334.00

Analysis

I have reviewed all documentary evidence and find that in accordance with section 88 of the Act the tenants were duly served with the October Notice on October 10, 2018, and the November Notice on November 3, 2018.

I accept the landlord's evidence regarding the address discrepancy, and I find that the correct address of the rental unit is that as set out on the November Notice.

I find that the tenants were obligated to pay monthly rent in the amount of \$1,400.00, as established in the tenancy agreement. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenants have failed to pay rental arrears in the amount of \$2,334.00, comprised of the balance of unpaid rent owed by February 1, 2018

I accept the landlord's undisputed evidence and find that the tenants did not pay the rent owed in full within the five days granted under section 46 (4) of the Act and did not apply to dispute the November Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on November 13, 2018, the effective date of the November Notice.

Section 7 of the Act states:

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 find that the landlord is entitled to an order of possession and a monetary Order of \$2,334.00 for rental arrears owed by February 1, 2019 as claimed by the landlord.

I find that the tenants did not pay the October rent by October 12, 2018. By virtue of the agreement between one of the tenants and the landlord dated October 10, 2018, I find that the landlord may retain the security deposit (\$700.00) in partial satisfaction of the rental arrears.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

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

Rental arrears (October 2018 to February 2019)	\$2,334.00
Filing fee	\$100.00
Security deposit credit	-\$700.00
Total	\$1,734.00

Conclusion

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

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the rental arrears owed by the tenants.

Pursuant to sections 67 and 72(1) of the Act, I find that the landlord is entitled to a monetary order in the amount of \$1,734.00 for unpaid rent, and for the recovery of the filing fee for this application. 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.

The landlord is provided with these orders in the above terms and must serve the tenant with these orders as soon as possible.

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 08, 2019

Residential Tenancy Branch