



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPM MNR MNDC MNSD FF

Introduction

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

- an order of possession based on a mutual agreement to end tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order 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 pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant acknowledged service of the landlord's application.

Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award for unpaid rent or loss?

Is the landlord entitled to retain the security deposit?

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

Background and Evidence

The tenancy began on September 25, 2017 with a monthly rent of \$1275.00 payable on the 1st day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy.

The landlord testified that on December 7, 2018 the parties entered into a mutual agreement to end the tenancy effective December 31, 2018. The landlord submitted a hand written agreement to end the tenancy which was signed by the tenant.

The landlord's monetary claim is for outstanding use and occupancy rent in the amount of \$2550.00. The landlord testified the tenant refused to honor the mutual agreement and has not paid any rent for the months of January and February 2019.

The tenant acknowledged signing the written agreement to end tenancy which was prepared by the landlord. The tenant argues he signed the agreement under duress as the landlord was threatening to evict him sooner and send a cleaner into the unit.

The tenant acknowledged he has not paid any rent for January and February 2019 due to losing his job.

Analysis

Pursuant to section 44(1)(c) of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Pursuant to section 55(2)(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy has ended.

The tenant and landlord agreed in writing that the tenancy would end on December 31, 2018. The landlord was entitled to possession of the rental unit effective this date. I do not accept the tenant's argument that he only signed the agreement under duress. The tenant provided insufficient evidence in support of this argument.

The landlord is granted an Order of Possession pursuant to section 55 of the Act.

I find the landlord has suffered a loss of rent in the amount of \$2550.00 as the tenant refused to vacate and has not paid for occupancy of the unit for January and February 2019. The landlord is awarded \$2550.00 as claimed.

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 for a total monetary award of \$2650.00.

The landlord continues to hold a security deposit of \$600.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$2050.00.

Conclusion

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

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2050.00. Should the tenant 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 22, 2019

Residential Tenancy Branch