



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNRL-S OPM OPN OPU

Introduction

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter. This hearing dealt with the landlord's application for:

- an Order of possession pursuant to section 46 of the *Act*;
- a monetary award from the tenants pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenants confirmed receipt of the landlord's 10 Day Notice to End Tenancy, evidence package and application for dispute. Pursuant to sections 88 & 89 of the *Act*, the tenants are found to have been duly served with the landlord's application for dispute, evidence and Notice to End Tenancy.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Can the landlord recover a monetary award, including a return of the filing fee?

Background and Evidence

The parties explained this tenancy began on May 1, 2015. Rent is \$1,600.00 per month and a security deposit of \$800.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants' acknowledged receiving a 10 Day Notice to End Tenancy on approximately January 3, 2019 after they failed to pay rent for January 2019. The tenants' confirmed no rent was paid for January 2019 and agreed with the landlord's

testimony that no rent was paid for February or March 2019. The tenants' disagreed that any rent remained outstanding for December 2018, saying they paid the landlord's brother, \$1,3000.00 in cash for all outstanding rent up to the date this payment was made. No receipt was issued for this payment.

The tenants said they had been told by the landlord's mother they could remain in the property after the issuance of the 10 Day Notice and they therefore took no steps to dispute this notice. Furthermore, the tenants alleged the landlord's mother had informed them rent would be raised to \$2,000.00 per month, which led to further confusion related to payments of rent.

Analysis

The tenants failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made 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 has led to the end of the tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 13, 2019. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. 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.

The landlord provided undisputed testimony and that rent was not paid from January through March 2019. The tenants' acknowledged not paying this rent.

Pursuant to section 67 of the *Act*, I find that the landlord is entitled to a monetary award of \$4,800.00 for unpaid rent. Using the offsetting provisions contained in section 72 of the *Act*, the landlord may withhold the tenants' security deposit in partial satisfaction for the money owed.

I decline to award any outstanding rent for December 2018. I accept the tenants' testimony that rent was paid in cash. Section 26(2) of the *Act* states, "a landlord must

provide a tenant with a receipt for rent paid in cash.” I find the landlord failed to do so and must therefore demonstrate this rent was not received. The landlord was unable to do this, and I accept the tenants’ testimony of payments made for \$1,300.00. I find the tenants to be credible and their testimony contained sufficient detail to satisfy me that rent of \$500.00 was paid for December 2018.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenants. The landlord is provided with formal Orders in the above terms. Should the tenant fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

I make a Monetary Order of \$4,100.00 in favour of the landlord as follows:

Amount	Item
Unpaid rent for January 2019	\$1,600.00
Unpaid rent for February 2019	1,600.00
Unpaid rent for March 2019	1,600.00
Less Security Deposit	(-800.00)
Return of Filing fee	100.00
Total =	\$4,100.00

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: March 12, 2019

Residential Tenancy Branch