



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1158833 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNRL-S OPU

Introduction

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

- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an Order of Possession for non-payment of rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67; and,
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

R.B. and T.B. appeared as representatives for the landlord. The landlord had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenants did not attend the hearing. I kept the teleconference line open from the scheduled hearing time of 9:30 a.m. until 9:41 a.m. to allow the tenants the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct participant code was provided to the tenants.

The landlord testified that it served each of the tenants with the Notice of Hearing and Application for Dispute Resolution and the landlord's evidence package by registered mail sent March 1, 2019 which is deemed to have been received by the tenants five days later, on March 6, 2019, under section 90 of the *Act*. The landlord provided the Canada Post tracking numbers in support of service referenced on the first page of the decision. Based on the undisputed testimony of the landlord, I find the landlord timely

served the tenants with the documents on March 6, 2019 pursuant to section 89 and 90 of the *Act*.

The landlord testified that it issued a 10 Day Notice to End Tenancy for Unpaid Rent (the “Ten-Day Notice”) and it personally served the tenants the notice on the door of the tenant’s rental unit on February 18, 2019. The Ten-Day stated unpaid rent of \$4,559.74 and unpaid utilities of \$570.45 as of January 27, 2019. The notice stated a move out dated of February 28, 2019. Based on the landlord’s undisputed testimony, I find that the Ten-Day notice was duly served on the tenants on February 18, 2019 in accordance with section 88 of the *Act*.

Preliminary Matter: Name Correction

The landlord testified that its application stated the incorrect spelling of the last name of the tenant, B.W. I herein amend the landlord’s application to state to the correct the spelling of the name of the tenant, B.W., which is stated on first page of this decision, pursuant to section 64(3)(c) of the *Act*.

Preliminary Matter: Request to Amend Application To Include Further Rent

At the hearing the landlord requested an amendment to its Application for Dispute Resolution to add additional rent which became due after the service of the Notice to End Tenancy. Residential Tenancy Branch *Rules of Procedure* Rule 4.2 provides

4.2 Amending an application at the hearing

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.” (emphasis added)(Residential Tenancy Branch *Rules of Procedure* Rule 4.2)

Landlord’s request to amend its application to include rental arrears accruing after the service of the Ten-Day Notice is directly within the scope of Residential Tenancy Branch *Rules of Procedure* Rule 4.2. Accordingly, I grant landlord’s request to amend its application to include additional rent accrued since the service of the Ten-Day.

Issue(s) to be Decided

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Is the landlord entitled to an Order of Possession for non-payment of rent and utilities pursuant to section 55?

Is the landlord entitled to a monetary order for unpaid rent and utilities pursuant to section 67?

Is the landlord entitled to reimbursement of its filing fee for this application from the tenants pursuant to section 72?

Background and Evidence

The landlord testified that the tenancy started on May 26, 2018 and the rent was \$2,800.00 payable on the 26th day of each month. The tenants paid a \$1,400.00 security deposit.

The landlord testified that the tenants only made the following partial payments of rent since September 2018:

<u>Date</u>	<u>Amount</u>
October 2018	\$2,283.33
November 2018	\$2,490.27
December 2018	\$1,866.66
January 2019	\$0.00
February 2019	\$600.00
March 2019	\$0.00
April 2019	\$375.00

The tenancy agreement stated that the tenants were responsible for utility payments. The landlord submitted gas utility statements from May 28, 2018 to November 16, 2018 totalling \$410.85. The landlord also presented electrical utility statements from May 1, 2018 to November 15, 2018 totalling \$1,096.86. The landlord testified that a third party paid \$450.00 of the tenant's utility bills on October 30, 2018. The landlord testified that there have been no other payments made towards the tenant's utility bills.

The landlord testified that the tenants transferred the utilities into their names after November 2018. The landlord does not know whether the tenants have paid the utility bills since the utility accounts were transferred into the tenants' names.

The landlord testified that the tenants still live in the rental unit.

Analysis

Pursuant to section 46(4) of the *Act*, tenants have five days after receipt of a notice to end a tenancy for unpaid rent and utilities to dispute the notice. In this matter, the tenants were personally served the Ten-Day Notice on February 18, 2019. Accordingly, the tenants had five days after the deemed date of service of January 17, 2019 to dispute the notice, that being January 22, 2019. However, the tenants did not file an application to dispute the notice and the deadline to dispute the notice has expired.

Section 46(5) of the *Act* states that tenants who do not timely file an application to dispute a notice to end tenancy for cause are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Since the tenants did not timely file an application to dispute the landlord's Ten-Day Notice, I find that the tenants are conclusively presumed to have accepted that this tenancy ended on the effective date of the notice, being February 28, 2019. Accordingly, I grant the landlord's application for an order for possession pursuant to section 55 of the *Act*.

Based upon the undisputed testimony of the landlord and the terms of tenancy agreement, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,800.00, on time and in full each month, up to and including the rental period ending February 25, 2019.

I find that the tenants made the following payments since September 2018: a partial rent payment of \$2,283.33 in October 2018; a partial rent payment of \$2,490.27 in November 2018; a partial payment of \$1,866.66 in December 2018 and no rent payments in January 2019.

Section 71(1) of the *Act* states that "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results." Pursuant to section 71(1), I find the landlord is

entitled to rent arrears of: \$516.67 for October 2018; \$309.73 for November 2018; \$933.34 for December 2018 and \$2,800.00 for January 2019. Accordingly, the landlord is entitled to a monetary award of \$4,559.74 for unpaid rent.

I also find that the tenants owe \$3,411.61 for overholding the rental unit for the period of February 26, 2019 to April 11, 2019, calculated as described below.

Section 57 of the *Act* defines an "overholding tenant" as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended. The section goes on to say a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

In the case before me, as per the Ten-Day Notice; I find the tenancy ended on February 28, 2019. However, I am satisfied from the landlord's undisputed testimony that the tenants continued to overhold the rental unit up to the date of the hearing on April 11, 2019.

Residential Tenancy Policy Guideline #3 states tenants are not liable to pay rent after a tenancy agreement has ended pursuant to Section 44 of the *Act*, however if tenants remain in possession of the premises (overholds), the tenants will be liable to pay occupation rent on a per diem basis until the landlords recovers possession of the premises.

As the tenants remained in the unit for the full rental period of February 26, 2019 to March 25, 2019, the landlords are entitled to receive \$2,800.00 for overholding that period. In addition, since the tenants remained in the rental unit from March 26, 2019 to the date of this hearing on April 11, 2019, I find that the landlord is entitled to overholding rent in the amount of \$1,586.61 (fifteen days at the per diem rate of \$93.33). Accordingly, the tenants have incurred \$4,386.61 (\$2,800.00 plus \$4,386.61) in overholding damages. However, the tenants are entitled to a credit of \$975.00 for the payments made by the tenants after the tenancy ended. Accordingly, the landlord is entitled to a monetary order of \$3,411.61 for overholding damages.

The landlord also requested reimbursement for the tenants' electric and gas utility expenses. Based upon the landlord's undisputed testimony and the terms of the tenancy agreement, I find that the tenants have an obligation under the tenancy agreement to pay their utility expenses. As such, I find that tenants are obligated to reimburse the landlord for the electric and gas utility expenses pursuant to section 71(1) of the *Act*.

Based upon the utility statements provided, I find that the tenants incurred \$410.85 in gas utility expenses and \$1,096.86 in electric utility expenses for a total of \$1,507.71 in utility expenses. Based on the landlord's undisputed testimony, I find that the tenants only paid \$450.00 towards the utility expenses leaving an outstanding balance of \$1,057.71. However, since the landlord only requested reimbursement of \$570.45 in utility expenses in its application for dispute resolution, I only grant the landlord a monetary order of \$570.45 for reimbursement of utilities.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$1,400.00 which may be deducted from the damages owed by the tenants pursuant to section 72(2)(b) of the *Act*.

In addition, since the landlord has been successful this matter, I award the landlord \$100.00 for recovery of the filing fee which may also be deducted from the security deposit pursuant to section 72(2)(b) of the *Act*.

Accordingly, I find that the landlords are entitled to a monetary order of \$7,241.80, calculated as follows.

<u>Item</u>	<u>Amount</u>
Unpaid rent	\$4,559.74
Overholding damages	\$3,411.61
Reimbursement of utility expenses	\$570.45
Less security deposit	-\$1,400.00
Filing fee	\$100.00
Total	\$7,241.80

Conclusion

I find the landlords are entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of **\$7,241.80**. If the tenants fail to comply with this order, the landlord may file the order in the Provincial Court to be 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: April 11, 2019

Residential Tenancy Branch