



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPRM-DR

Introduction

This hearing dealt with the landlords' application pursuant to the Residential Tenancy Act (the "Act") for an order of possession, a monetary order for unpaid rent and reimbursement of the filing fee.

Landlord, YS appeared on behalf of the landlords. The tenants did not attend although I left the teleconference hearing connection open from the time the hearing commenced at 11:00 a.m. for an additional ten minutes to 11:10 a.m. to enable the tenants to call. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes. I also confirmed from the teleconference system that landlord, YS, and I were the only persons who had called into this teleconference.

The landlords testified that the tenants were each served with the notice of dispute resolution package and the landlords' evidence package by registered mail on January 23, 2019. The landlords provided the registered mail tracking numbers.

The landlords filed an amendment on February 5, 2019 increasing the amount of the monetary order sought to \$8,300.00. The landlords testified that the tenants were each served by with the landlords' amendment on February 5, 2019 by registered mail. The landlords provided the registered mail tracking numbers for the service of the amendment. I find that the tenants have been served with the landlord' application, evidence and amendment in accordance with sections 88 to 90 of the Act.

The landlords served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") by personally delivering the notice to the tenants on January 8, 2019. The Ten-Day Notice stated unpaid rent of \$1,550.00 with a move out date of January 18, 2019. I find that the tenants have been served with the landlords' Ten-Day Notice in accordance with sections 88 of the Act.

I note that Section 78 if the Act states that the director may, with or without a hearing:

- (a) Correct typographic, grammatical, arithmetic or similar errors in his or her decision or order,
- (b) clarify the decision or order, and

(c) deal with an obvious error or inadvertent omission in the decision or order.

Issue(s) to be Decided

Are the landlords entitled to an order for possession pursuant to section 55 of the *Act*?

Are the landlords entitled to a monetary order for unpaid rent pursuant to section 67 of the *Act*?

Are the landlords entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlords testified that the tenancy was a fixed term tenancy starting on May 27, 2018 and ending on May 31, 2019. Rent was \$2,250.00 payable on the first of each month. The tenant paid a \$1,125.00 security deposit which the landlords continue to hold in trust.

The landlords testified that the tenants paid \$700.00 on January 3, 2019 for rent. The landlords testified that tenants have not paid any further rent payments in January 2019 or thereafter.

The landlords testified that they did not receive an application for dispute resolution from the tenant regarding the Ten-Day Notice.

The landlords testified that the tenants still reside in the rental unit.

The landlords are requesting a monetary order compensation for unpaid rent from January 2019 to March 2019 and future rent losses through April 2019.

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 to dispute the notice. In this matter, the Ten-Day Notice was served on the tenants by personal delivery on January 8, 2019. Accordingly, the tenants had five days after the date of service of January 8, 2019 to dispute the notice, that being January 13, 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 landlords' 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 January 18, 2019. Accordingly, I grant the landlords' 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 Tenant was obligated to pay the monthly rent in the amount of \$2,250.00, on time and in full each month, up to and including the rental period ending January 31, 2019.

I find that the tenants have not paid the entire rent for January 2019. Specifically, I find that the tenants paid \$700.00 in rent on January 3, 2019 and that the balance of the January 2019 rent of \$1,550.00 has not been paid. 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 a monetary award of \$1,550.00 for unpaid rent in January 2019.

I also find that the Tenant owes \$2,632.26 for overholding the rental unit for the period of February 1, 2019 to March 1, 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 January 18, 2019. However, I am satisfied from the landlords' undisputed testimony that the tenants continue to overhold the rental unit up to the date of the hearing on March 1, 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 periods of February 1, 2019 to February 28, 2019, the landlords are entitled to receive a total of ~~\$2,550.00~~ \$2,250.00 for overholding that period. In addition, since the tenants remained in the rental unit a further day until March 1, 2019, I find that the landlords are entitled to overholding rent in the amount of \$82.26 (one day at the per diem rate of \$82.26).

The landlords have also claimed compensation for further overholding damages after the date of the hearing based on the anticipation that the tenants will not vacate the rental unit after the hearing. I find that the landlords claim for future damages to be speculative and that the landlords have not provided sufficient evidence to prove future damages on the balance of probabilities. Accordingly, I do not grant any compensation for potential future overholding damages.

Based on the undisputed testimony of the landlord and the tenancy agreement, I find that the landlord holds a security deposit of \$1,125.00 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 landlords \$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 \$2,857.26, calculated as follows.

<u>Item</u>	<u>Amount</u>
January rent unpaid	\$1,550.00
February overholding damages	\$2,250.00
March overholding damages	\$82.26
Less security deposit	(\$-1,125.00)
Filing fee	\$100.00
Total	\$2,857.26

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 landlords may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlords a monetary order in the amount of **\$2,857.26**. 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: March 8, 2019

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A) OF THE RESIDENTIAL TENANCY ACT ON APRIL 25, 2019 AT THE PLACES INDICATED BY UNDERLINING OR USING ~~STRIKETHROUGH~~.