



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPUM-DR ER RR CNR

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$4,800.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:41 am, in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord’s property manager and the landlord’s agent attended the hearing and were 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’s property manager, the landlord’s agent and I were the only ones who had called into this teleconference.

The landlord’s property manager testified that the tenants were served the notice of dispute resolution form and supporting evidence package via registered mail on April

18, 2019. I find that the tenants are deemed served with this package on April 23, 2019, five days after the landlord mailed it, in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent in the amount of \$ 4,800.00 representing compensation for unpaid rent for March and April 2019?
- Apply the security deposit against any monetary order made at this hearing?
- Recover the filing fee?

Are the tenants entitled to:

- The cancellation of the Notice?
- An order that repairs and emergency repairs be done?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written fixed term tenancy agreement starting February 5, 2019. Monthly rent is \$2,400.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$1,200.00. The landlord still retains this deposit.

The landlord's property manager testified that the tenants did not pay rent for the month of March or April 2019 in the amount of \$ 4,800.00.

The landlord issued a 10 Day Notice to End Tenancy (the "**Notice**") dated April 2, 2019 for \$ 4,800.00 in unpaid rent due on April 1, 2019. The Notice has an effective date on April 12, 2019. The landlord's agent entered a copy of the Notice into evidence.

The landlord served the Notice on the tenants by posting it on the tenants' door on April 2, 2019.

The landlord's property manager testified that the tenants vacated the rental unit on May 1, 2019.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting it on the door of the rental unit, the tenants are deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenants are deemed to have received the Notice on April 5, 2019.

Based on the testimony of the landlord's agent, and on the tenancy agreement itself, I find that the tenants were obligated to pay monthly rent in the amount of \$ 2,400.00. 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 \$ 4,800.00, comprised of the balance of unpaid rent owed by April 1, 2019.

As such, I find that the Notice was validly issued, and the landlord is entitled to an order of possession. I order that the tenants deliver vacant possession of the rental unit to the landlord by May 20, 2019 at 4:00 pm.

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.

Therefore, I find that the landlord is entitled to a monetary order of \$4,800.00 for unpaid rent owed by April 1, 2019 as claimed by the landlord.

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.

Pursuant to section 72(2) of the Act, I find the landlord is entitled to retain the security deposit of \$ 1,200.00 in partial satisfaction of the amount owed for unpaid rent by the tenant.

As I found that the Notice is valid, and granted an order of possession to the landlord, I decline to make any order regarding the repairs sought by the tenants.

Conclusion

I dismiss the tenants' application, without leave to reapply.

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$3,700.00, representing the following:

Outstanding rent	\$4,800.00
Credit for retaining security deposit	-\$1,200.00
Filing Fee	\$100.00
Total	\$3,700.00

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.

Pursuant to section 55 of the Act, I order that the tenants deliver full and peaceable vacant possession and occupation of the rental unit to the landlord, by May 20, 2019 at 4:00 pm. This order may be filed and enforced in the Supreme Court of British Columbia.

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: May 17, 2019

Residential Tenancy Branch