



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU MNRL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 23, 2019 (10 Day Notice), for a monetary order for unpaid rent and utilities, to retain all or a part of the tenants' security deposit and pet damage deposit towards rent and utilities owing, and to recover the cost of the filing fee.

The landlord and their spouse attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 10, 2019 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail. Two registered mail tracking numbers were provided and have been included on the cover page of this decision for ease of reference. The landlord testified that both packages were each addressed to the tenants in their own envelope at the rental unit address and that the tenants continue to occupy the rental unit. Based on the above and considering that the Canada Post registered mail website supports the landlord's testimony, I find that the tenants was served with the Notice of Hearing, application and documentary evidence on December 17, 2019, which is the date that both packages were signed for and accepted according to the Canada Post registered mail website. Give the above, I find this matter to be undisputed by the tenants.

Preliminary and Procedural Matters

The landlord testified that eventually the tenants paid December 2019 rent late and have subsequently failed to pay January 2020 rent. As a result, the landlord requested to amend the application to include rent owed for January 2020, which replaces the claim for December 2019 rent, which was paid late. The landlord also stated that the tenants continue to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act to include unpaid rent for January 2020 and note that the monetary amount remains the same as December 2019 rent was eventually paid late according the landlord.

Secondly, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the landlord did not have an email address for the tenants, the decision will be emailed to the tenants. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A month to month tenancy began on July 17, 2019. Monthly rent in the amount \$1,450.00 was due on the first day of each month and that the tenants paid a \$725.00 security deposit and a \$725.00 pet damage deposit at the start of the tenancy, which the landlord continues to hold.

The landlord applied for dispute resolution on December 10, 2019. The landlord testified that the 10 Day Notice was served by placing in the mailbox of the tenants at the rental unit on November 23, 2019. The 10 Day Notice indicates that \$1,800.00 was owed in rent as of November 1, 2019 and that \$137.30 in unpaid utilities was owed as of

October 29, 2019. The landlord stated that the tenants continue to occupy the rental unit. The landlord testified that the tenants did not dispute the 10 Day Notice, nor pay the amounts owed. The effective vacancy date listed on the 10 Day Notice was December 4, 2019.

The landlord referred to the tenancy agreement addendum, which states in part:

- 5. Additional company will be \$150 per person per month after 14 days, consecutive or not
- 6. Additional occupants will be \$300 per month per person

I note that the tenancy agreement is signed and dated by the landlord and a tenant and reflects the existence of the addendum and the number of terms on the addendum.

The landlord's monetary claim of \$3,987.30 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Niece for Sept 2019	\$300.00
2. Niece's boyfriend for Sept 2019	\$150.00
3. Tenant's boyfriend for Sept 2019	\$150.00
4. Niece for Oct 2019	\$300.00
5. Niece's boyfriend for Oct 2019	\$150.00
6. Tenant's boyfriend for Oct 2019	\$150.00
7. Tenant's sister and her child for Nov 2019	\$600.00
8. Tenant's sister and her child for Dec 2019	\$600.00
9. January 2020 unpaid rent	\$1,450.00
10. Unpaid hydro	\$137.30
TOTAL	\$3,987.30

The landlord provided the demand letter in evidence for the unpaid utilities and the utility bill. The landlord is seeking an order of possession, a monetary order for unpaid rent, to retain the tenants' security deposit and pet damage deposit towards rent owing, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlord's undisputed testimony and I find that the tenants failed to pay the amount owing as claimed by the landlord or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice on November 26, 2019. I have used November 26, 2019, as pursuant to section 90 of the Act, documents placed in the mailbox of the tenants are deemed served three days after they are placed in the mailbox. The effective vacancy date of the 10 Day Notice is listed as December 4, 2019, which I find automatically corrects under section 53 of the Act to December 6, 2019, which is 10 days after the 10 Day Notice was deemed served. I find the tenants are conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was December 6, 2019. The tenants continue to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on December 6, 2019 and that the tenants have overheld the rental unit since that date.

Claim for unpaid rent and loss of rent – Firstly, as the tenants were served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenants. I accept the undisputed testimony of the landlord that the tenants owe rent and unpaid utilities as claimed and as described above.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$3,987.30** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

The landlord is holding a security deposit of \$725.00 and pet damage deposit of \$725.00, which was paid by the tenants at the start of the tenancy and has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenants' combined deposits of \$1,450.00 plus \$0.00 interest as follows:

ITEM DESCRIPTION	AMOUNT GRANTED
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1. Niece for Sept 2019	\$300.00
2. Niece's boyfriend for Sept 2019	\$150.00
3. Tenant's boyfriend for Sept 2019	\$150.00
4. Niece for Oct 2019	\$300.00
5. Niece's boyfriend for Oct 2019	\$150.00
6. Tenant's boyfriend for Oct 2019	\$150.00
7. Tenant's sister and her child for Nov 2019	\$600.00
8. Tenant's sister and her child for Dec 2019	\$600.00
9. January 2020 unpaid rent	\$1,450.00
10. Unpaid hydro	\$137.30
11. Filing fee	\$100.00
TOTAL	\$4,087.30

Pursuant to section 38 and 67 of the Act, I grant the landlord authorization to retain the tenants' combined deposits of \$1,450.00 towards the amount owing as described above. I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$2,637.30** owing by the tenants to the landlord.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenancy ended on December 6, 2019.

The landlord has established a total monetary claim of \$4,087.30 as indicated above. The landlord is authorized to retain the tenants' full security deposit of \$725.00 and full pet damage deposit of \$725.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenants to the landlord in the amount of \$2,637.30. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenants. The tenants will be sent the decision by regular mail as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 14, 2020

Residential Tenancy Branch