



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' pet damage and security deposits (the deposits) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Preliminary issue

The landlord listed the address for the "lower" unit, however both advised that the tenant rented the entire home and paid the rent for the entire home during the tenancy; accordingly, the address of the entire home is reflected in the decision; pursuant to section 64(3)(c) that amendment was made.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord's agent gave the following testimony. The tenancy began "about 15 years ago". Rent in the amount of \$1970.00 is payable in advance on the first day of each month for the entire home. The tenant failed to pay rent in the month(s) of December 2019 and on December 11, 2019 the landlord served the tenant with a notice to end tenancy. The tenant made partial payments of \$500.00, \$300.00 and \$205.00, through the month leaving an amount owing of \$670.00 for December. The tenant paid the rent for January rent in full. The agent advised that as of today's hearing the amount of unpaid rent is \$670.00. The agent advised that they seek a monetary order in that amount as well as an order of possession.

The tenant gave the following testimony. The tenant testified that the landlord never gave a receipt for cash payments. The tenant testified that he did a lot of work for the landlord around the property. The tenant testified that the home has mold issues and that its in need of immediate repair. The tenant testified that he has text messages from the landlord that show he was given credit towards rent for his work. The tenant testified that he didn't know that he had to dispute the notice.

Analysis

The tenants failed to pay their rent in full within five days of being deemed to have received the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 led to the end of their tenancy on the corrected effective date of the notice.

In this case, this required the tenants to vacate the premises by December 21, 2019. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of

the Act, which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Although the tenant testified that he had all the text messages to prove he had paid rent in full and that he was given rent credits for his work; he did not submit them for this hearing. I am satisfied that the tenants continue to owe the landlord unpaid rent. Using the offsetting provision under Section 72 of the Act, I hereby apply the \$500.00 security deposit against the amount of unpaid rent \$670.00. The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$770.00. I order that the landlord retain the \$500.00 deposit and interest of \$17.69 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$252.31. This order may be filed in the Small Claims 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: January 27, 2020

Residential Tenancy Branch