



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BELLA BAY PROPERTIES
and [tenant name suppressed to protect
privacy]

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' security deposit 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 tenants acknowledged receipt of evidence submitted by the landlord. The tenants did not submit any documentary evidence for this hearing.

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' deposit 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 gave the following testimony. The tenancy began on or about March 1, 2018. Rent in the amount of \$4000.00 is payable in advance on the first day of each

month. The tenants paid a security deposit of \$2000.00 which the landlord still holds. The tenants failed to pay rent in the month(s) of November and December 2019 and on December 14, 2019 the landlord served the tenants with a notice to end tenancy. The tenants further failed to pay rent in the month(s) of January to March 2020. The landlord advised that as of today's hearing the amount of unpaid rent is \$17500.00. The landlord seeks an order of possession, a monetary order for unpaid rent and the recovery of the \$100.00 filing fee.

The tenants gave the following testimony. CB testified that she isn't sure about the amount of unpaid rent. PB testified that due to significant health issues with their daughter they were unable to make full rental payments. CB testified that the landlord hasn't kept the property up to a livable standard. CB and PB testified that they have significant amounts of evidence to support their position but were unable to provide it for today's hearing.

Analysis

The tenants failed to pay their rent in full within five days of being deemed to have received the 10 Day Notices. 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.

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.

Based on the evidence provided by the landlord, I am satisfied that the tenants continue to owe the landlord unpaid rent in the amount of \$17,500.00. The landlord is also entitled to the recovery of the \$100.00 filing fee. Using the offsetting provision under Section 72 of the *Act*, I hereby apply the \$2000.00 security deposit against the amount of unpaid rent and filing fee.

Conclusion

The landlord is granted an order of possession and a monetary order for \$15,600.00. The landlord may retain the security deposit. I grant the landlord an order under section

67 for the balance due of \$15,600.00. 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: March 05, 2020

Residential Tenancy Branch