



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, OPC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- a monetary order for unpaid rent;
- authority to keep the tenants' security deposit to use against a monetary award;
- an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (Notice); and
- recovery of the filing fee.

The landlord and the landlord's agent attended the hearing; however, the tenants did not attend.

The agent stated they served each tenant with their application for dispute resolution and Notice of Hearing by registered mail on November 23, 2020. Filed into evidence were the registered mail receipts containing the tracking numbers for each envelope.

I accept the landlord's evidence that the tenants were served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenants' absence.

The agent was provided the opportunity to present his evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and/or arguments are reproduced here.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary Issue –

After the landlord filed their application for dispute resolution and prior to the hearing, the tenants vacated the rental unit. As a result, I have therefore excluded their request for an order of possession of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation from the tenants, to retain their security deposit to partially satisfy any monetary award, and to recover the cost of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a month-to-month tenancy start date of June 1, 2020, monthly rent of \$1,000, due on the 1st day of the month, and a security deposit of \$500 being paid by the tenants to the landlord.

The landlord retained the tenants' security deposit, having made this claim against it.

The landlord submitted that the tenants were served with a One Month Notice to End Tenancy for Cause (Notice) on or about October 26, 2020, by attaching it to the tenants' door. The effective move-out date listed on the Notice was November 30, 2020. Filed into evidence was the Notice.

The landlord submitted that the tenants did not dispute the Notice, nor did they vacate by November 30, 2020. Instead, they vacated by or near the end of December 2020, without paying the monthly rent for November or December 2020.

The landlord's original monetary claim was \$1,000 for unpaid monthly rent for November, but since their application was filed, the tenants have accumulated further unpaid monthly rent, for December 2020, for a total monetary claim of \$2,000.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Despite being duly served with the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package), the tenants failed to attend the hearing. The landlord's evidence is therefore uncontested.

Under section 26 of the Act, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, unless the tenant has a right under the Act to deduct all or a portion of the rent. A legal right may include authorization from an Arbitrator giving you permission to keep all or part of the rent or costs incurred to make an "emergency repair", as defined by the Act.

I find that the landlords submitted sufficient evidence to show that the tenants owed, but did not pay rent of \$1,000 for November 2020, under the terms of the written tenancy agreement.

I also find the tenants failed to comply with the terms of the Notice served on them, and held over in the rental unit for an additional month, without paying rent. I therefore find the tenants owed rent for the month of December 2020.

Under the Rules, a landlord may amend their application at the hearing in circumstances that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the application for dispute resolution was made.

I therefore allowed the landlord to increase their monetary claim by \$1,000, as the tenants remained in the rental unit until the end of December 2020.

I therefore find the landlord has established a monetary claim of \$2,000 for unpaid rent of \$1,000 for the months of November and December 2020, each.

The landlord is also entitled to recovery of the \$100 filing fee.

The security deposit of this tenancy will be off-set from the award made herein.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,600 under the following terms:

ITEM	AMOUNT
1. Unpaid rent for November 2020	\$1,000.00
2. Unpaid rent for December 2020	\$1,000.00
3. Filing fee	\$100.00
4. Less security deposit	-\$500.00
TOTAL MONETARY ORDER	\$1,600.00

Should the tenants fail to pay the landlord this amount without delay, the order must be served to the tenants for enforcement. Thereafter, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are **cautioned** that costs of such enforcement are subject to recovery from the tenants.

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: February 3, 2021

Residential Tenancy Branch