



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL, OPR, OPN**

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member.

As both parties were present service was confirmed. The tenant testified that they received the landlord's materials and served no materials of their own. Based on their testimonies I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due and owing and the total arrear as of the date of the hearing is \$6,450.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$1,200.00 to \$6,450.00 as the additional amount of rent arrears could be reasonably anticipated.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this periodic tenancy is \$1,850.00 payable on the first of each month. The landlord no longer holds a security deposit as the parties agreed to use it against earlier rental arrears. The tenant paid only \$1,050.00 for November 2020 rent and has failed to pay any rent for the months of December 2020, January and February 2021.

The landlord submits that there is a total rental arrear of \$6,450.00 as at the date of the hearing and seeks a monetary award in that amount.

The tenant testified that the rental unit is in a state of disrepair and they feel that they are not obligated to pay any rent.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a partial resolution of the issues in dispute.

Both parties agreed to the following final and binding settlement of the following issues currently under dispute at this time:

1. This tenancy will end on 12:00 pm, February 10, 2021, by which time the tenant and any other occupants will have vacated the rental unit.
2. This settlement agreement constitutes a final and binding resolution of landlord's application for an order of possession at this hearing.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle the issue of the landlord's seeking an Order of Possession.

The parties were not able to come to an agreement in regard to the other aspects of the claim and I make the following finding on those issues.

Pursuant to section 26(1) of the *Act*, a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. While the tenant submits that the rental unit requires repairs and maintenance as it is in a state of disrepair, I find that this does not allow the tenant to make a unilateral deduction from the rent. The *Act* does not provide that the tenant may simply make deductions from the monthly rent even if they feel the landlord is being negligent in maintaining the rental unit.

Based on the testimonies I find that there was an enforceable agreement between the parties wherein the tenant was obligated to pay monthly rent in the amount of \$1,850.00. I accept the evidence of the parties that the tenant failed to pay full rent for November 2020 and has not paid rent for the months of December 2020 and January 2021. I find that the landlord is entitled to a monetary award in the amount of \$4,750.00 for those months.

As the parties have agreed that this tenancy ends on February 10, 2021, I find that the landlord is entitled to compensation in the amount of \$660.00 for the period in February during which the tenant occupies the rental unit.

Conclusion

To give effect to the agreement between the parties I grant an Order of Possession to the landlord effective **12:00pm on February 10, 2021**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$5,410.00. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: February 4, 2021

Residential Tenancy Branch