



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' 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, pursuant to section 67;
- a monetary order 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 tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, 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. During the hearing, the "landlord GSG" confirmed that his son, the other named landlord BG, was authorized to represent him as agent and interpreter at this hearing, as English is his second language (collectively "landlords"). The landlord BG ("landlord") provided all of the testimony on behalf of both landlords, at this hearing.

The landlord testified that the tenant was served personally by landlord GSG with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 2, 2014 ("10 Day Notice"), on the same date. The landlord provided a signed proof of service form, confirming that he personally witnessed this service, with the landlords' application. The tenant confirmed receipt of the 10 Day Notice, via personal service by landlord GSG, on December 2, 2014. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 10 Day Notice on December 2, 2014.

The landlord testified that the tenant was personally served by landlord GSG, with the landlords' application for dispute resolution hearing notice and first written evidence package on December 9, 2014. The landlord provided a signed proof of service statement, confirming that he personally witnessed this service, with the landlords' application. The tenant confirmed receipt of the hearing notice only, not the first written evidence package. I find the landlord to be credible and truthful in his testimony and accept that the tenant was served with the hearing notice and first written evidence package, as stated by the landlord. The tenant did not provide any written evidence in response to the landlords' application. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was duly served with the landlords' hearing notice on December 9, 2014 and deemed served with the landlords' first written evidence package on December 9, 2014.

The landlord testified that the tenant was personally served by landlord GSG, with the landlords' second written evidence package on December 22, 2014. The landlord provided a signed proof of service statement, confirming that he personally witnessed this service, with the landlords' application. The tenant stated that he did not receive the landlords' second written evidence package. I find the landlord to be credible and truthful in his testimony and accept that the tenant was served with the second written evidence package, as stated by the landlord. The tenant did not provide any written evidence in response to the landlords' application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' second written evidence package on December 22, 2014.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that this tenancy began on August 1, 2014, for a fixed term of eight months. Monthly rent in the amount of \$550.00 is payable on the first day of each month. A security deposit of \$275.00 was paid by the tenant and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit, which is the basement unit in the landlords' house. The landlords occupy the main floor unit of the house.

A "previous hearing" was held between landlord GSG and this tenant, regarding this tenancy on November 5, 2014. A "previous decision" and "previous order" were issued by another arbitrator on November 10, 2014 and that file number appears on the front page of this decision. That previous decision awarded the landlord GSG a monetary order for unpaid rent from September to November 2014, inclusive, in the amount of \$1,040 total. That previous decision did not deal with the tenant's security deposit. Accordingly, this decision and the orders made at this hearing, do not deal with any of the issues from the previous hearing. The landlord stated that he is currently enforcing that previous monetary order in the court system and the tenant indicated that he had not paid that monetary order. I make no orders with respect to that previous hearing, decision or order.

A written tenancy agreement exists for this tenancy, but none was provided for this hearing. The landlord confirmed that landlord GSG was named as landlord on the tenancy agreement. The tenant confirmed that he had a copy of the tenancy agreement but could not locate it during the hearing. The landlord stated that he had not received a signed copy of the tenancy agreement back from the tenant and the landlords did not have an extra copy of the agreement. The landlord confirmed that since the previous hearing concluded, he was advised by the tenant that the tenant had not signed the tenancy agreement because his daughter advised him not to, as the tenant did not agree with the fixed term of the tenancy.

The landlords seek a monetary order in the amount of \$1,100.00 for unpaid rent for December 2014 and January 2015. This amount is indicated in the landlords' application. The 10 Day Notice, issued in the name of the landlord GSG, states that \$550.00 for unpaid rent was due on December 1, 2014. At the hearing, the landlord confirmed that rent for January 2015 in the amount of \$550.00 was also unpaid.

The tenant testified that he did not pay rent for December 2014 or January 2015, totalling \$1,100.00. He stated that he has the money for rent, but has not yet paid it to the landlords because his stove has not been working since the beginning of December

2014. The tenant said that he called the landlords to fix the stove in December 2014, a repair person attended to check the stove and the repair person stated that he would return later but never did. The tenant indicated that he refused to pay the landlords for rent, if his stove was not working.

The landlords provided documentary evidence in their second written evidence package, that the tenant reported on December 18, 2014, that his stove had not been working for three weeks. This report was made when the tenant came to pick up his mail from the landlords. The landlord documented his conversation with the tenant in writing, saying that the tenant would claim at this hearing that he did not pay rent because his stove was not working. The landlord also provided a witness statement where he observed "NB," a repair person, check the tenant's stove in his rental unit on December 19, 2014, the day after the tenant's complaint. The statement also indicates that the stove in the tenant's rental unit was purchased the year before. NB provided a signed statement, submitted with the landlords' application, stating that he checked the stove and oven in the tenant's rental unit on December 19, 2014 and they were in good working condition. NB's statement also provided photographs of the stove and oven while they were turned on. The tenant stated that he did not receive this second written evidence package from the landlords. He claimed that his stove was still not working, NB did not tell him that his stove was in good working condition and NB never returned to fix his stove as he said he would.

The landlords seek to recover the filing fee of \$50.00 for this application from the tenant.

Analysis

Section 26 of the Act requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act. Rent can be deducted if the tenant has paid for emergency repairs in accordance with section 33 of the Act. The tenant did not pay for any emergency repairs in the rental unit and therefore, was not entitled to deduct any amounts from rent.

The tenant failed to pay the full rent for December 2014 within five days of receiving the 10 Day Notice on December 2, 2014. The tenant has not made an application pursuant to section 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the Act, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on December 12, 2014, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone

on the premises to vacate the premises by December 12, 2014. As this has not occurred, I find that the landlords are entitled to a 5 day Order of Possession.

The landlords seek unpaid rent of \$550.00 for each of December 2014 and January 2015. The tenant agreed that he did not pay rent for December 2014 and January 2015 and that he owes \$1,100.00 to the landlords. Accordingly, the landlords are entitled to \$1,100.00 in rental arrears from the tenant.

The landlords continue to hold the tenant's security deposit of \$275.00. In accordance with the offsetting provisions of section 72 of the Act, I allow the landlords to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that they are entitled to recover the \$50.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlords effective **five days after service of this Order** on the tenant. Should the tenant or anyone 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 landlords' favour in the amount of \$875.00 against the tenant as follows:

Item	Amount
December 2014 rent	\$550.00
January 2015 rent	550.00
Less Security Deposit	-275.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$875.00

The landlords are provided with a monetary order in the amount of \$875.00 in the above terms and 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.

The landlord confirmed that he was only seeking a monetary order of \$1,100.00 for December 2014 and January 2015 rent, as outlined above. The landlord advised that he applied for a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, because he was told to do so by the Residential Tenancy Branch. He made this application in anticipation of the January 2015 rent, which was not yet due at the time that the landlords' application was filed on December 9, 2014. Accordingly, as the landlords' monetary order for unpaid rent has already been awarded as outlined above, there is no need to consider the landlords' application for a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, as it is now moot.

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 08, 2015

Residential Tenancy Branch

