



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with a Applications for Dispute Resolution (the “Applications”) under the *Residential Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid rent and utilities, and for a monetary order for unpaid rent and utilities. The landlord originally applied under the Direct Request process which was adjourned to a participatory hearing by way of an Interim Decision dated November 8, 2016 and should be read in conjunction with this Decision. As the landlord applied for an order of possession and a monetary order for unpaid rent in two different Applications, both of those file numbers have been joined in this one Decision. I note that in the second Application the landlord applied for the recovery of the cost of his filing fee of \$100.00 which will be considered in this Decision also.

The landlord and the tenants appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

The tenants confirmed that they received the landlord’s documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenants also confirmed that they did not submit any documentary evidence in response to the landlord’s Applications.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 1, 2016 and is scheduled to end on July 31, 2017. Monthly rent in the amount of \$1,100.00 is due on the first day of each month. The tenants paid a \$300.00 security deposit which the landlord continues to hold.

The tenants confirmed receiving the 10 Day Notice for Unpaid Rent or Utilities dated November 16, 2016 (the "10 Day Notice") on their door on November 16, 2016. The 10 Day Notice indicated that the tenants owed \$1,100.00 as of November 1, 2016. The tenants testified that they paid \$1,100.00 on November 27, 2016 which was two days before the effective date of the 10 Day Notice, November 29, 2016. The landlord testified that no payments have been received from the tenants for October 2016, November 2016 or December 2016, and that \$600.00 is still owed from September 2016.

The tenants claimed that they did not owe rent as claimed but had to proof of payments made such as banking records or account records. The landlord testified that he provided a rent receipt to the tenants in August 2016 as the tenants paid \$1,000.00 of the required \$1,100.00 rent and the landlord made the decision to forgive the rest of August 2016 unpaid rent.

The tenants then claimed that the 10 Day Notice was not related to rent and that it was in response to the tenant's not paying the full security deposit of \$500.00 as they only paid \$300.00 of the security deposit. The tenants were advised that the 10 Day Notice was not related to the security deposit whatsoever and that they were mistaken.

The tenants confirmed that they did not dispute the 10 Day Notice or pay the rent within 5 days of being served the 10 Day Notice on November 16, 2016. The tenants also confirmed that rent for December 2016 has not been paid as of the date of the hearing, December 6, 2016 yet the tenants continue to occupy the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – Pursuant to section 46 of the *Act* the tenants are conclusively presumed to have accepted that the tenancy ended on November 29, 2016 by failing to dispute the 10 Day Notice within 5 days of being served with the 10 Day Notice on November 16, 2016 which the tenants stated was the date they received the 10 Day Notice. Furthermore, the tenants failed to pay rent for November 2016 within 5 days of being served the 10 Day Notice. Given the above, I find the 10 Day Notice to be valid and pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. The tenancy ended on November 29, 2016, the effective date of the 10 Day Notice.

Claim for unpaid rent and loss of rent – I have considered the testimony of the parties and prefer the testimony of the landlord over that of the tenants as the tenants have provided no documentary evidence to support their position that rent has been paid, the tenants confirmed that December 2016 rent was not paid, and made an argument related to the 10 Day Notice being related to the security deposit which is not the case. I also note that the tenants did not

dispute the 10 Day Notice within the 5 day timeline which I find supports that they did not pay rent as claimed by the landlord.

Given the above, I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$3,900.00** as claimed for unpaid rent and loss of rent as described above, plus recovery of the \$100.00 filing fee.

Monetary Order – I authorize the landlord to retain the tenants' full security deposit of \$300.00, in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenants in the amount of **\$3,600.00**.

Conclusion

The landlord's Application is successful.

The tenancy ended on November 29, 2016. The landlord is granted an order of possession effective two (2) days after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has established a monetary claim of \$3,900.00. The landlord has been authorized to retain the tenants' full security deposit of \$300.00, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing to the landlord by the tenants in the amount of \$3,600.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 7, 2016

Residential Tenancy Branch