



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On March 20, 2018, the Landlord applied for a Direct Request proceeding seeking the following under the Act, regulation, or tenancy agreement:

- An Order of Possession for unpaid rent;
- A Monetary Order for unpaid rent; and
- To recover the filing fee.

On March 26, 2018, the Direct Request proceeding was adjourned to a participatory hearing scheduled for April 23, 2018.

At the start of the hearing, I confirmed that S.P. appeared to represent himself as the Landlord and that C.L. (hereafter referred to as the “Tenant”) appeared to represent the Tenants. Both parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. The Landlord and the Tenant provided a solemn affirmation.

The Landlord testified that he served each Tenant personally with the Notice of Reconvened Hearing package on March 31, 2018 via registered mail and the Tenant confirmed receipt of this package. In accordance with sections 89 and 90 of the Act, I find that the Tenants were served with the Notice of Reconvened Hearing package.

I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the Landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

The Landlord testified that the Tenants viewed the rental unit on January 21, 2018, that they gave \$480.00 as a security deposit, and that they agreed that the balance of the security deposit would be paid when the Tenants moved in.

The written tenancy agreement indicated that the tenancy would commence on February 1, 2018 as a month to month tenancy, that rent was \$1,700.00 per month, and that only a portion (\$480.00) of the \$850.00 security deposit was paid.

The Landlord advised that the Tenants were allowed to move into the premises on January 27, 2018, that they paid \$1,320.00 on January 29, 2018, and that he provided a receipt indicating that \$370.00 of this payment was accepted to fulfill the balance owing of the security deposit and that the difference (\$950.00) would be put towards February rent. A balance owing for February rent was \$750.00.

The Landlord stated that the Tenants provided post-dated cheques for rent but advised him after February rent was due that there were insufficient funds in their account. When he asked for rent a week later, the other tenant "E.J." said that the Landlord did not know the Tenants' rights with respect to the security deposit. On February 15, 2018, he stated that the Tenants paid \$200.00 towards February rent bringing down the outstanding amount of rent to \$550.00 for the month. The Landlord also advised that March and April rents have not been paid.

The Landlord confirmed that a 10 Day Notice was served by hand to the Tenant on March 2, 2018, indicating that \$2,250.00 was outstanding. The Landlord clarified in the monetary worksheet submitted with the Application that he is seeking \$550.00 that is outstanding for February rent and \$1,700.00 in unpaid rent for March 2018. During the hearing, he also sought to amend the monetary claim to add an additional \$1,700.00 in unpaid rent for April 2018.

The Tenant advised that her daughter E.J. expected full time work but was unsuccessful; therefore, they did not have the funds to pay the rent in full. She stated that she is on disability and that she phoned BC Housing. She also stated that E.J.

discovered that a security deposit could be paid within 30 days of the beginning of the tenancy and advised the Landlord that the money allocated to the security deposit was actually for rent. Therefore, they were not in arrears. The Tenant stated that they did not dispute the 10 Day Notice for Unpaid Rent because they did not know what was owed, but she acknowledged that they did not pay March or April rent because the Landlord took legal action.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the Act that are applicable to this situation. I will provide the following findings and reasons when rendering this decision.

Section 26 of the Act states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the Act, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the Act allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this notice is received by the Tenants, they would have five days to pay the rent in full or to dispute the notice. If the Tenants do not complete either one of those actions within the five days, the notice is conclusively presumed to be accepted and not only does the tenancy end on the effective date of the notice, but the rental unit must be vacant by that date as well.

Section 55 of the Act allows a Landlord to apply for an Order of Possession and a Monetary Order for the outstanding rent.

During the hearing, the Landlord and Tenant agreed that as per the written tenancy agreement, the \$480.00 was paid on January 21, 2018 as a portion of the security deposit. Furthermore, the Landlord testified that he provided a receipt stating that the balance of the security deposit was to be paid by January 27, 2018, which was acknowledged by the Tenant. The Landlord and Tenant then both agreed that with respect to the payment on January 29, 2018 of \$1,320.00, the Landlord issued a receipt to the Tenant indicating that \$370.00 of this payment was accepted to fulfill the balance owing of the security deposit and that the remaining \$950.00 would be put towards February rent. As such, I am satisfied that a security deposit of \$850.00 was taken in full, and satisfied this requirement in the written tenancy agreement.

With respect to E.J.'s belief that the money paid for the security deposit could be considered rent, I find it important to note that Section 21 of the Act prohibits a security deposit from being applied to rent without the Landlord's written consent. Consequently, as there was no evidence of written consent by the Landlord to direct the security deposit towards the outstanding rent, I find that the Landlord acted within his rights and applied the remaining \$950.00 appropriately to February rent. In considering the additional \$200.00 payment on February 15, 2018, the remaining rent outstanding for February 2018 was \$550.00. As March rent was not paid either, I find that the Landlord's calculation of \$2,250.00 was accurate.

As I have determined that the rent was not paid in full when it was due and that the Tenants did not meet any of the applicable criteria that authorized them to withhold the rent under the Act, I find that the Landlord is entitled to an Order of Possession and a Monetary Order. In the hearing, the Landlord requested that his application be amended to include the outstanding rent for the month of April 2018 as well. As such, I grant an Order of Possession and a Monetary Order in the amount of \$3,950.00 for rent owing for the months of February, March, and April 2018.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

Finally, during the hearing, the Landlord and Tenant both agreed that the "Main Floor" of 9360 Wallace Crescent was the dispute address of the rental unit, and the Application was amended to reflect this change.

Conclusion

I grant an Order of Possession to the Landlord effective at **1:00 PM on April 30, 2018 after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Item	Amount
February 2018 Rent	\$550.00
March 2018 Rent	\$1,700.00

April 2018 Rent	\$1,700.00
Recovery of Filing Fee for this application	\$100.00
Total Monetary Award	\$4,050.00

The Landlord is provided with a Monetary Order in the amount of \$4,050.00 in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: April 24, 2018

Residential Tenancy Branch