



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNDL-S MNRL-S OPR

This hearing dealt with the landlord's 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, for money owed or compensation for damage to the unit or loss under the *Act* pursuant to section 67; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to testify, present evidence and make submissions on the application. The tenants confirmed receipt of the landlord's Application for Dispute Resolution and evidence for this hearing. The tenants did/not submit evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent? Is the landlord entitled to a monetary for unpaid rent, damage to the unit and other loss as a result of this tenancy? Is the landlord entitled to recover the amount of the filing fee?

Background and Evidence

This tenancy began on November 15, 2017 as a 12 month fixed term tenancy. A written tenancy agreement was submitted as evidence for this hearing showing a monthly rental amount of \$1050.00. The landlord confirmed that she holds a \$525.00 security deposit paid by the tenants at the outset of this tenancy. The landlord sought a monetary order and an order of possession for unpaid rent. As of the date of this hearing, the tenants continue to reside in the rental unit as of the date of this hearing.

The landlord issued a 10 Day Notice to End Tenancy to the tenants on April 4, 2018. The tenants acknowledged receipt of the 10 Day Notice from the landlord. The tenants did not apply to dispute the notice to end tenancy with their own application but

attended this hearing of the landlord's application and stated they have not been able to find a new home yet.

The parties agreed that the tenants had done maintenance and cleaning work around the residential premises and were entitled to rental reductions based on the hours of work done. The landlord testified that the tenants have not been doing very much work recently and have been doing their work poorly: portions of the residence are not sufficiently cleaned and the yards are not maintained. The landlord testified that the tenants had earned a rent reduction from \$1050.00 to \$870.00 in April 2018 but had no rental reductions in May or June 2018.

The landlord testified that the tenants did not pay rent in April 2018 when it was due and have not paid as of the date of this hearing. The amount of rent to be paid in April 2018 was \$870.00 after deductions for work done on premises. The landlord provided undisputed testimony that the tenants have also not paid rent for May or June 2018.

As well as \$2970.00 in outstanding rent, the landlord testified that the tenants still owe \$115.00 towards a March 2018 repair payment plan. The parties agree that the tenants were making payments to address repairs to a door. The tenants testified that they would pay if they could and are hopeful to get caught up in rental arrears as soon as possible.

The tenants claimed that one of the delays in paying rent was that the landlord had contacted a government agent and, as a result, their subsidy was cancelled. The landlord denied these allegations. Tenant MD testified that it has been difficult to catch up because her subsidies are backlogged. She was unable to provide dates as to when she contacted the ministry or that cheques would be issued. Tenant MD testified that, in May, she gave birth and that June had just started. There were, she submitted, reasons for the delay in payments that the landlord was aware of. Tenant BH testified that the tenants need more time to pay the outstanding rent.

The tenants also disputed the testimony of the landlord that they had failed to do any maintenance or cleaning at the rental unit however they acknowledged that they owed outstanding rent and that the cleaning payment was contained within a separate agreement from the residential tenancy agreement.

The landlord also sought to recover for potential repairs to the rental unit.

Analysis

The tenants failed to pay the April 2018 rent in full within five days of receiving the 10 Day Notice to End Tenancy. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. I note that the tenants did not dispute that they owe outstanding rent. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by April 14, 2018. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent totalling \$2970.00 including the remaining rent owed for April 2018 (\$870.00) and the entire unpaid rent for May and June 2018. I accept this uncontested evidence offered by the landlord. I accept the landlord's submission that, even if the tenants were able to vacate immediately, the landlord would not likely be able to re-rent the rental unit before July 1, 2018. I am issuing the attached monetary order that includes the unpaid rent totalling \$2970.00.

The landlord testified that she continues to hold a security deposit of \$525.00 plus any interest from November 15, 2017 to the date of this decision for this tenancy. I will allow the landlord to retain the \$525.00 security deposit in partial satisfaction of the monetary award. [no interest is payable for this period]

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.

The landlord's application for a monetary order for repairs or damage to the unit at the end of the tenancy is premature: the landlord was advised during the hearing that this portion of her application would be dismissed with leave to reapply.

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant(s). If the tenant(s) do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for April, May and June 2018	\$2970.00
Repair to door: final payment	115.00
Less Security Deposit	-525.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$2660.00

The landlord is provided with this monetary Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: June 19, 2018

Residential Tenancy Branch