



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") made on December 19, 2018. The landlord originally applied by way of direct request proceeding, which was adjourned to a participatory dispute resolution hearing. The landlord sought the following remedies under the Act:

1. an order of possession;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on February 14, 2019, and the landlord's agents attended, , were given a full opportunity to be heard, to present testimony, to make submissions, and call witnesses. The tenants did not attend.

The landlord's agent A.F. testified that the Notice of Dispute Resolution Proceeding package (the "package") was served on the tenants by way of Canada Post registered mail on January 10, 2019. I find that the tenants were served in compliance with section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The agents testified that the tenancy commenced on July 1, 2018, and that the tenancy was initially a fixed-term tenancy which has become a month to month tenancy. The tenancy address changed shortly after the tenancy began, with rent in the new rental unit being \$680.00 monthly, due on the first of the month. The tenants paid a security deposit of \$325.00. There is no pet damage deposit. A copy of the written tenancy agreement was submitted into evidence.

On December 4, 2018, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenants in-person. A copy of the Notice was submitted into evidence. The Notice indicated that rent, in arrears and due on December 1, 2018, was in the amount of \$2,720.00. The agents testified that the tenants have not paid rent for January or February 2019, with a total amount owing of \$4,080.00 as of today's date (February 14, 2019).

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Monetary Order for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlords comply with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if the tenants paid rent within five days of service. The Notice also explained that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submissions, that the tenants did not pay rent for December (and previous months) 2018, January 2019, and February 2019. There is insufficient evidence before me that the tenants had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenants applied to cancel the Notice within five days of service.

Taking into consideration the undisputed oral and documentary evidence of the parties, and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has have met the onus of proving their claim that the tenants owe \$4,080.00.

As the landlord is successful in their claim, I grant the landlord a further monetary award in the amount of \$100.00 for recovery of the filing fee.

I hereby order that the landlord retain the security deposit in the amount of \$325.00 in partial satisfaction of the award.

A total monetary order of \$3,855.00 for the landlord is calculated as follows:

Claim	Amount
Unpaid rent	\$4,080.00
Filing fee	100.00
<i>LESS</i> security deposit	(\$325.00)
Total:	\$3,855.00

Order of Possession

Regarding the order of possession sought by the landlord, subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

In this case, the landlord applied for dispute resolution seeking an order of possession, the landlord issued a notice to end the tenancy, the tenants did not dispute the Notice, and the time for making that application had expired. Therefore, I grant the landlord an order of possession.

Conclusion

I grant the landlord an order of possession, which must be served on the tenants and is effective two (2) days from the date of service. The order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I grant the landlord a monetary order in the amount of \$3,855.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: February 14, 2019

Residential Tenancy Branch