



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL MNRL OPU

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- a monetary order for damages pursuant to section 67.

Both parties 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.

The tenants confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with the Application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

The tenants confirmed receipt of the 10 Notice to End Tenancy for Cause (the 10 Day Notice) dated December 13, 2018. Accordingly, I find that the 10 Day Notice was served to the tenants in accordance with section 88 of the *Act*.

The tenant RJ confirmed at the beginning of the hearing that the tenants will move out by 4:00 p.m. on February 28, 2019. It was confirmed with both parties at the hearing that the tenants must move out by that date and time, and that the landlord would be given an Order of Possession.

Although the landlord applied for a monetary Order of \$4,500.00 in their initial claim for unpaid rent, since they applied another \$1,500.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$4,500.00 to \$6,000.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to a monetary order for damages?

Background and Evidence

This month-to-month tenancy began some time on or about April 2018 with monthly rent currently set at \$1,500.00, which is payable on the first day of each month. No written tenancy agreement exists for this tenancy. The tenant testified that a security deposit of \$750.00 was paid for this tenancy, which the landlord testified was never received from the tenants.

The landlord issued the 10 Day Notice, indicating an effective move-out date of December 23, 2018. The landlord testified that the tenants failed to pay any rent for November 2018 through to February 2019, and is requesting a monetary order for the 4 months of unpaid rent. The tenant testified that he had paid the November 2018 rent in cash, but was never issued a receipt for the payment. The tenant admits that he did not pay rent for 3 months as the landlord had verbally agreed that the tenants would be given free rent in compensation for moving out. The landlord testified that he did discuss an agreement to offer rent as compensation, but that the agreement was for 1 month free rent if the tenants had agreed to move out last year. The landlord testified that the tenants did not accept the offer, and it is no longer valid.

The landlord is also seeking a monetary order in the amount of \$1,500.00 for damages and cleaning for this tenancy.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord and the tenant and the supporting documents respecting matters of rent, I find that the tenants failed to pay rent for this tenancy. The tenant testified in the hearing that November 2018 rent was paid, but admitted to withholding rent for December 2018 through to February 2019. Both parties also referenced an agreement of free rent in compensation for the early end of this tenancy, although the terms of this agreement are disputed.

I find that the tenants failed to provide sufficient evidence to support that they had the right to withhold rent for this tenancy. I also find that the tenants failed to provide sufficient evidence to support that November 2018 rent was paid. Accordingly, I find that the landlord is entitled to the \$6,000.00 in unpaid rent.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. As the tenants have yet to move out, I find landlord's application for damages and cleaning to be premature, and I dismiss this portion of the landlord's application with leave to reapply

Conclusion

As the tenants agreed to move out by 4:00 p.m. on February 28, 2019, I grant an Order of Possession to the landlord for that date and time. 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.

I issue a \$6,000.00 Monetary Order in favour of the landlord which allows the landlord to recover unpaid rent for this tenancy.

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.

The remaining portion of the landlord's application is dismissed with leave to reapply

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: February 15, 2019

Residential Tenancy Branch