



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

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; and
- a monetary order for unpaid rent pursuant to section 67.

Both parties attended the hearing and 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 parties acknowledged receipt of evidence submitted by the other.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Background and Evidence

The tenancy began on or about October 1, 2018. Rent in the amount of \$2200.00 is payable in advance on the first day of each month and at the outset of the tenancy paid a \$1100.00 security deposit. The tenant failed to pay rent in the month(s) of November 2018 and on November 26, 2018 the landlord served the tenant with a notice to end tenancy. The tenant further failed to pay rent in the month(s) of December 2018 – February 2019 inclusive. The landlord advised that as of today's hearing the amount of unpaid rent is \$8800.00.

TT testified that there have been problems with mold, rodents and septic tank issues since they moved into the unit. TT testified that the landlord refused to make any repairs. TT testified that they have withheld the rent until he makes those repairs. TT

testified that she did not have an order from an Arbitrator or the landlords consent to withhold rent.

Analysis

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.

Further to the above, the tenants failed to pay their rent in full within five days of being deemed to have received the 10 Day Notices. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. 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 corrected effective date of the notice.

As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant(s). If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Based on the evidence provided by the landlord and TT's testimony confirming non-payment, I am satisfied that the tenants continue to owe the landlord unpaid rent. Although the landlord has not applied to retain the security deposit, using the offsetting provision under Section 72 of the *Act*, I hereby apply the security deposit against the amount of unpaid rent. I issue a monetary award in the landlord's favour in the amount of \$7700.00.

I note that the landlord requested the recovery of the \$100.00 filing fee, however the landlord did not apply for that as part of his application and therefore I am unable to award that amount.

Conclusion

Item	Amount
Unpaid Rent November 2018-February 2019	\$8800.00
Less Deposits	-1100.00
Total Monetary Order	\$7700.00

The landlord is granted an order of possession and a monetary order for \$7700.00. The landlord may retain the security deposit.

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 22, 2019

Residential Tenancy Branch