



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING ADVISORY ASSOCIATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF, MT, CNR

Introduction

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

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66; and
- cancellation of the landlord's 10 Day Notice pursuant to section 46.

This hearing dealt with the landlord's cross application pursuant to the Act for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

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 landlord's agent (who is also the property manager of the dispute address) testified that she served the tenants with the dispute resolution package on 17 October 2014 by registered mail. The landlord's agent provided me with Canada Post tracking numbers that confirm the same. The tenant confirmed receipt of the dispute resolution package. On the basis of this evidence, I am satisfied that the tenants were served with notice of this application pursuant to section 89 of the Act.

The landlord's agent provided sworn testimony that on 3 September 2014 she served the tenants personally with the 10 Day Notice. The tenant DD confirmed this service. On the basis of this evidence, I am satisfied that the tenants were served with the 10 Day Notice pursuant to section 88 of the Act.

The tenant DD testified that he served the landlord with the dispute resolution package by placing it in the landlord's mailbox on 22 September 2014. Service by this method is not contemplated by subsection 89(1) of the Act; however, the landlord's agent testified that she did receive the dispute resolution package. On the basis that the landlord did receive notice of this hearing, I find that the landlord has been served with the dispute resolution package.

Issue(s) to be Decided

Are the tenants entitled to more time make an application to cancel the 10 Day Notice? If so, should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant claim and the landlord's cross claim and my findings around each are set out below.

The tenancy agreement in respect of this tenancy was signed by the tenants and landlord on 2 May 2008. The tenancy agreement established that the tenancy started 1 June 2008. Monthly rent of \$720.00 was payable on the first. The landlord issued a series of rent increases, the most recent of which established monthly rent of \$795.00. A security deposit of \$360.00 was collected 2 May 2008. The landlord continues to hold this security deposit plus accrued interest.

The landlord issued the 10 Day Notice on 3 September 2014. The 10 Day Notice stated that rent of \$710.26 remained outstanding.

The landlord provided a ledger showing rental arrears of \$711.52 as at 3 September 2014. The tenant and landlord agree that the tenants remain in possession of the rental unit and that no payments have been made since 3 September 2014.

The landlord claims the following amounts:

Item	Amount
Unpaid September Rent	\$711.52
Unpaid October Rent	795.00
Unpaid November Rent	795.00
Total Monetary Order Requested	\$2,301.52

The tenant and landlord's agent agree that the tenants' rent was paid directly by the Province of British Columbia. The tenant provided sworn testimony that he did not know why these payments had stopped and that he was following up with the Province, and his MLA to find out why this had happened.

Analysis

I determined that I would hear the landlord's application first. On the landlord's application for an order of possession for unpaid rent and a monetary order for the unpaid rent, the landlord has the onus of proof.

In this case the landlord has shown that the tenant has not paid rent to which the landlord is entitled pursuant to section 26 of the Act. The landlord has shown that the tenant has rental arrears totalling \$2,301.52. Accordingly the landlord is entitled to its order of possession and monetary order for unpaid rent. The tenants' application to cancel the 10 Day Notice is cancelled. I issue a two day order of possession to the landlord.

The landlord applied to keep the tenants' security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. The current value of the security deposit plus accrued interest is \$363.60.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

As I did not need to make use of the presumption continued in subsection 46(5) of the Act, there is no need to consider the tenants' application for an extension of time. The tenants' application is dismissed without leave to reapply.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) 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 monetary order in the landlord's favour in the amount of \$1,987.92 under the following terms:

Item	Amount
Unpaid September Rent	\$711.52
Unpaid October Rent	795.00
Unpaid November Rent	795.00
Offset Security Deposit Amount	-363.60
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1,987.92

The landlord is provided with these orders 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 these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

The tenants' application is dismissed without leave to reapply.

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

Dated: November 13, 2014

Residential Tenancy Branch

