



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlords and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlords named both tenants as respondents in their application for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants named only one Landlord NH as a respondent in their application for:

- more time to make an application to cancel the landlord's 10 Day Notice, pursuant to section 66;
- cancellation of the landlord's 10 Day Notice, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenants ("tenant GCG" and "tenant HC") did not attend this hearing, although it lasted approximately 23 minutes. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord JJH confirmed that she authorized her husband, the other landlord, NH ("landlord"), to represent her as agent at this hearing, as English was her second language.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding: The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenants' participation in this hearing, I order the tenants' entire application dismissed without liberty to reapply.

The landlord testified that he personally served tenant GCG with a 10 Day Notice to End Tenancy for Unpaid Rent, dated December 12, 2014, with an effective move-out date of December 23, 2014 ("10 Day Notice"), on December 12, 2014 at 9:40 p.m. The landlords provided a hand delivery receipt signed by tenant GCG, as proof of service, with their Application. Section 88(e) of the *Act* permits service by leaving a copy of the 10 Day Notice with an adult who apparently resides with the person. The landlord testified that both tenants were residing in the same rental unit and he saw tenant HC in the rental unit with tenant GCG at the time of service. In accordance with section 88 of the *Act*, I find that both tenants were served with the 10 Day Notice on December 12, 2014.

The landlord testified that both tenants were served separately with the landlords' application for dispute resolution hearing package ("Application") by way of registered mail on December 23, 2014. The landlords provided Canada Post receipts and tracking numbers for both tenants, as proof of service, with their Application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' Application on December 28, 2014, the fifth day after its registered mailing.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord testified that this tenancy began on July 4, 2014 for a fixed term to end on July 4, 2015. Monthly rent in the amount of \$1,380.00 is payable on the first day of each month. A security deposit of \$690.00 was paid by the tenants on July 4, 2014, and the landlords continue to retain this deposit.

The landlord testified that he received a telephone message and an email from tenant GCG on the day prior to this hearing, indicating that the rental unit was vacant and that the landlord could take possession of the rental unit. However, the landlord stated that he was unsure of whether the tenants had vacated the rental unit, as he had not checked the rental unit since he received the information from tenant GCG. The landlord clarified that he was still seeking an order of possession against both tenants for this rental unit.

The landlord testified that the 10 Day Notice indicated unpaid rent in the amount of \$1,380.00 was due on December 1, 2014. The landlord stated that he cashed the tenants' post-dated rent cheque, dated December 1, 2014, on December 9, 2014, and it was returned for insufficient funds on December 11, 2014. The landlord provided copies of the tenants' rent cheque with a verification notice from the bank, dated December 11, 2014, that the entire cheque of \$1,380.00 was returned for insufficient funds.

The landlord stated that rent in the amount of \$1,380.00 is unpaid for December 2014. The landlord testified that rent in the amount of \$1,380.00 is also unpaid for January 2015. The landlord confirmed that no rent payments have been received from the tenants since the 10 Day Notice was served upon them.

The landlords initially requested a monetary order of \$2,760.00 total. During the hearing, the landlords amended their application, stating that they are only seeking a monetary order of \$2,070.00 total for unpaid rent. The landlords reduced their claim, stating that they are only seeking \$690.00 in unpaid rent from January 1 to 15, 2015, instead of the full \$1,380.00 amount that they initially sought for January 2015 rent.

The landlords seek to retain the tenants' security deposit of \$690.00, which the landlords continue to hold.

The landlords also seek to recover the filing fee of \$50.00 for this Application from the tenants.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not appear. The tenants failed to pay the full rent due on December 1, 2014, within five days of receiving the 10 Day Notice. No partial payments have been made by the tenants. The tenants made an application to cancel the 10 Day Notice, pursuant to section 46 of the *Act*, and also requested more time to make the application to cancel the 10 Day Notice, pursuant to section 66 of the *Act*, as they made their application beyond the five day period. However, as the tenants did not appear at this hearing, I dismissed their application without leave to reapply, as noted earlier in this decision.

In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the outstanding rent within five days and as their application under sections 66 and 46 of the *Act* is dismissed, this led to the end of their tenancy on December 23, 2014, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 23, 2014. As this has not occurred, I find that the landlords are entitled to a 2 day Order of Possession.

The landlords provided undisputed evidence that the tenants failed to pay rent of \$2,070.00 for December 2014 and January 1 to 15, 2015. Therefore, I find that the landlords are entitled to rental arrears outstanding in the amount of \$2,070.00, against the tenants.

The landlords testified that they continue to hold the tenants' security deposit of \$690.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that they are entitled to recover the \$50.00 filing fee paid for the Application, from the tenants.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenants. Should the tenants or anyone on the premises 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 landlords' favour in the amount of \$1,430.00 against the tenants as follows:

Item	Amount
December 2014 Rent	\$1,380.00
January 1 to 15, 2015 Rent	690.00
Less Security Deposit	-690.00
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$1,430.00

The landlords are provided with a monetary order in the amount of \$1,430.00 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: January 16, 2015

Residential Tenancy Branch

