



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNDC

Introduction

This hearing dealt with applications from both Landlord LM (the landlord) and the tenants pursuant to the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent and for breach of a material term of the tenancy agreement pursuant to section 55; and
- a monetary order for money owed or compensation for damage or losses under the *Act*, regulation or tenancy agreement pursuant to section 67.

The tenants identified both landlords as Respondents in their application 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;
- cancellation of the landlord's 10 Day Notice pursuant to section 46; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing, although I waited until 10:50 a.m. in order to enable them to connect with this teleconference hearing scheduled for 10:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord entered written evidence and sworn testimony that he handed the female tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on April 24, 2015. He also gave witnessed written evidence and sworn testimony that he handed both tenants copies of his dispute resolution hearing package on May 7, 2015. I find that the landlord duly served the tenants with the above documents in accordance with sections 88 and 89 of the *Act* on the dates identified by the landlord.

The landlord testified that the male tenant vacated the rental unit on May 23, 2015, advising him that he was moving back to his father's residence. However, as the female tenant remains in the rental unit, the landlord asked for an end to this tenancy on the basis of the 10 Day Notice and the issuance of an Order of Possession.

The landlord also testified that he has not received any rent for this rental unit for the remainder of April or May 2015. The landlord asked for permission to amend the monetary award he was

seeking from \$100.00 to \$895.00, to reflect the unpaid rent that became owing as of May 2, 2015. Under the circumstances, I have allowed the landlord's request to amend the amount of the monetary award to \$895.00.

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 losses arising out of this tenancy?

Background and Evidence

On April 2, 2015, the tenants signed a periodic tenancy agreement and obtained the keys to the rental unit. They took possession of the rental unit that day. Monthly rent is set at \$795.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$400.00 security deposit paid on April 2, 2015.

The landlord entered into written evidence a series of receipts issued to the tenants over the first half of April 2015. When \$100.00 of rent for April 2015 remained owing, the landlord issued the 10 Day Notice seeking an end to this tenancy on the basis that the tenants had failed to pay the remaining \$100.00 of rent as of April 24, 2015.

Although the landlord also applied for an Order of Possession on the basis of the tenants' smoking in a non-smoking rental unit, there was no need for me to consider evidence in this regard.

Analysis - Tenants' Application

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 their application dismissed without liberty to reapply.

Analysis – Landlords' Application

The tenants failed to pay the \$100.00 in unpaid rent identified as owing in the 10 Day Notice within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving 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. In this case, this required the tenants to vacate the premises by May 5, 2015. As only the male tenant has vacated the rental premises, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on

the female tenant. If the female tenant does 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 undisputed written evidence and sworn testimony of the landlord, I find that the landlord is entitled to a monetary award of \$100.00 in unpaid rent owing from April 2015 and \$795.00 for May 2015. Although the landlord's application does not seek to retain the security deposit for this tenancy, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 dismiss the tenants' application without leave to reapply.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and to retain the tenants' security deposit:

Item	Amount
Unpaid April 2015 Rent	\$100.00
Unpaid May 2015 Rent	795.00
Less Security Deposit	-400.00
Total Monetary Order	\$495.00

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.

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: May 26, 2015

Residential Tenancy Branch

