



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNDC FF
For the tenants: CNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee.

The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and to recover the cost of the filing fee.

Tenant D.S. (hereinafter referred to as the “tenant”), the landlords, an articulated student for the landlords, and a law student for the landlords attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenant and landlords confirmed that they both received documentary evidence from the other party and that they had the opportunity to review that evidence prior to the hearing. I find the parties were sufficiently served in accordance with the *Act* as a result.

Issues to be Decided

- Should the 10 Day Notice dated June 4, 2015 be cancelled or upheld under the *Act*?
- Are the landlords entitled to an order of possession for unpaid rent or utilities under the *Act*?
- Are the landlords entitled to a monetary order for unpaid rent or utilities under the *Act*, and if so, in what amount?

Background and Evidence

The parties agreed that a month to month tenancy began on August 23, 2008. Monthly rent in the amount of \$1,000 is due on the first day of each month. The parties confirmed that a security deposit was not requested by the landlords at the start of the tenancy.

The tenant confirmed that she received the 10 Day Notice dated June 4, 2015 on June 4, 2015 with an effective vacancy date of June 14, 2015. The tenant disputed the 10 Day Notice on June 8, 2015, which is within the five day timeline provided for under section 46 of the *Act*.

The amount owing on the 10 Day Notice is listed as \$5,800 due June 1, 2015 and the landlords' application is for \$6,800 as the landlords are claiming for loss of July 2015 rent also on top of the \$5,800 listed on the 10 Day Notice as the tenants continue to occupy the rental unit.

The landlords testified that the tenants have failed to pay rent or have suffered a loss of rent for a total of \$6,800 as follows:

Month	Amount owing by tenants
1. January 2015 rent	\$800
2. February 2015 rent	\$1,000
3. March 2015 rent	\$1,000
4. April 2015 rent	\$1,000
5. May 2015 rent	\$1,000
6. June 2015 rent	\$1,000
7. July 2015 loss of rent	\$1,000
TOTAL CLAIM IN UNPAID RENT/LOSS OF RENT	\$6,800

The tenant confirmed that she even though she does not agree with the claim of the landlords regarding the amount of rent owing, she did not submit any documentary evidence to support that any of the payments making up the landlord's \$6,800 claim has been paid by the tenants. The tenant did not provide any oral testimony either to support if payments were made to the landlords.

The landlords supplied account summaries which they testified show when payments were received and for which months those payments were applied towards rent owed. The landlords

also orally reviewed the historical schedule of payments to explain for which amounts the tenants had paid and for which months they still owed rent.

The tenants continue to occupy the rental unit.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenants have failed to provide sufficient evidence that they paid the rent as required by the tenancy agreement. I find the landlords have provided sufficient evidence to support when the tenants last paid rent and for which months they continue to owe rent. As a result, **I dismiss** the tenants' application to cancel the 10 Day Notice and **I uphold** the 10 Day Notice dated June 4, 2015. The effective vacancy date of the 10 Day Notice was June 14, 2015, which has already passed.

As the landlords have applied for an order of possession and the tenants' application has been dismissed, pursuant to section 55 of the *Act*, **I grant** the landlords an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on June 14, 2015, which is the effective vacancy date of the 10 Day Notice.

Claim for unpaid rent and loss of rent – Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. I find the landlords have met the burden of proof in supporting that the tenants owe rent in the amount of \$5,800 as claimed, plus \$1,000 for loss of July 2015 rent for a total of **\$6,800**. The landlords were able to describe in detail the payments made by the tenants and for which months, whereas the tenant failed to provide any details as to payments made for rent.

Based on the above, **I find** that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. **I find** the landlord has met the burden of proof and has established a monetary claim of **\$6,800** comprised of \$5,800 owing for rent as claimed, plus \$1,000 for loss of July 2015 rent as the tenants continue to occupy the rental unit.

As the landlords' application had merit, **I grant** the landlords the recovery of the filing fee in the amount of **\$100**.

Monetary Order – I find that the landlords are entitled to a monetary order pursuant to section 67 of the *Act* as follows:

1. January 2015 rent	\$800
2. February 2015 rent	\$1,000

3. March 2015 rent	\$1,000
4. April 2015 rent	\$1,000
5. May 2015 rent	\$1,000
6. June 2015 rent	\$1,000
7. July 2015 loss of rent	\$1,000
8. Filing fee	\$100
TOTAL BALANCE OWING TO THE LANDLORD	\$6,900

Conclusion

The tenants' application is dismissed due to insufficient evidence.

The landlords' application is successful.

The 10 Day Notice dated June 4, 2015 is valid and is upheld. The landlords have been granted an order of possession effective **two (2) days** after service upon the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlords are granted a monetary order in the amount of **\$6,900**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 22, 2015

Residential Tenancy Branch

