



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on June 10, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on June 09, 2015 and June 10, 2015 were sent to each Tenant, via registered mail, at the rental unit. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however neither Tenant appeared at the hearing.

The Tenants filed an Application for Dispute Resolution, in which they applied to cancel a Notice to End Tenancy for Cause.

On July 24, 2015 the Landlord submitted documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Landlord stated that she was unable to serve these documents to the Tenants. As the documents were not served to the Tenants, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession; to a monetary Order for unpaid rent/lost revenue; to a monetary Order for unpaid utilities; and to keep all or part of the security deposit?

Should a Notice to End Tenancy for Cause be set aside?

Background and Evidence

The Landlord stated that:

- this tenancy began on November 26, 2006;
- the monthly rent at the start of the tenancy was \$1,100.00;
- the monthly rent at the end of the tenancy was \$1,124.00;
- rent was due by the first day of each month;
- the Tenants paid a security deposit of \$550.00 on November 25, 2006;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 14, 2015, was personally served to the female Tenant on June 04, 2015;
- the Tenants did not vacate the rental unit on June 14, 2015;
- the Tenants were still occupying the rental unit on July 20, 2015;
- it appeared the rental unit had been vacated by July 24, 2015, although personal property was left in the rental unit; and
- she does not wish to withdraw her application for an Order of Possession.

The Landlord is seeking compensation for unpaid rent/lost revenue for June and July of 2015, as the rental unit was not vacated in accordance with the Notice to End Tenancy. The Landlord stated that no rent was paid for June or July of 2015. She stated that she mistakenly based her claim for compensation on the original rent of \$1,100.00, rather than the increased rent of \$1,124.00.

The Landlord is seeking compensation for lost revenue for August of 2015. The Landlord stated that there is significant damage to the rental unit; that it will take approximately one month to repair the damage; and that she will be unable to rent the unit for the month of August as a result of the damage.

The Landlord is seeking compensation for unpaid utilities, in the amount of \$219.53. The Landlord stated that the municipality informed her that this amount is due in a letter dated July 22, 2015, which is one of the documents she has been unable to serve to the Tenants.

Analysis

The hearing was scheduled to commence at 9:30 a.m. on July 27, 2015 and it commenced at that time. The Landlord was present at the start of the hearing but by the time the hearing was concluded, the Tenants had not appeared. I find that the Tenants failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss their Application for Dispute Resolution without leave to reapply.

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,100.00

by the first day of each month, and that during the tenancy the rent was increased to \$1,124.00. Section 26(1) of the *Act* requires a tenant to pay rent to the landlord when it is due.

On the basis of the undisputed evidence, I find that the Tenant has not paid rent for June of 2015. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants owe the Landlord \$1,124.00 in rent for June of 2015.

Section 46(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice, if rent is not paid when it is due. On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to the female Tenant on June 04, 2015, which declared the Tenants must vacate by June 14, 2015.

Section 46 of the *Act* stipulates that Tenants have five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice.

I have no evidence that the Tenants paid the outstanding rent. Although the Tenants disputed a One Month Notice to End Tenancy for Cause on June 04, 201, I have no evidence that they disputed the Ten Day Notice for Unpaid Rent.

I therefore find, pursuant to section to section 46(5) of the *Act*, that the Tenants accepted that the tenancy ended on June 14, 2015. On this basis I grant the landlord an Order of Possession.

As the Tenants did not vacate the rental unit on June 14, 2015, I find that the Tenants obligated to pay rent, on a per diem basis, for the days the Tenants remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between June 15, 2015 and June 30, 2015, I find that the Landlord has been fully compensated for that period. I also find that the Tenants must compensate the Landlord for the 24 days in July that they occupied the rental unit, at a daily rate of \$36.26, which equates to \$870.24.

I find that the Tenants fundamentally breached the tenancy agreement when they did not pay rent when it was due. I find that the Tenants fundamentally breached section 46(5) of the *Act* when the Tenants did not vacate the rental unit by the effective date of the Ten Day Notice to End Tenancy. I find that the continued occupancy of the rental unit made it difficult, if not impossible, for the Landlord to find new tenants for the remainder of July. I therefore find that the Tenant must compensate the Landlord for the loss of revenue it can be reasonably expected to experience for the remainder of July, in the amount of \$253.76.

I decline to consider the Landlord's claim for compensation for loss of revenue for the month of August of 2015, as that claim relates to losses arising from physical damage to the rental unit, which is not the subject of this dispute. The Landlord retains the right to

file another Application for Dispute Resolution seeking compensation for damage to the rental unit and lost revenue associated to those damages.

I decline to consider the Landlord's claim for compensation for unpaid utilities of \$219.23, as the Landlord has been unable to notify the Tenants that this debt will be the subject of these proceedings. The Landlord retains the right to file another Application for Dispute Resolution seeking compensation for this debt.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenants. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,298.00, which is comprised of \$2,248.00 in unpaid rent/lost revenue and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenants' security deposit of \$550.00 plus interest of \$16.92 in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,731.08. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: July 28, 2015

Residential Tenancy Branch

