



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, damage or loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied 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 to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend although the 11:00 am teleconference continued until 11:16 am. The landlord's representative ("the landlord") was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenants on May 6, 2015 by handing it to the adult daughter who also resides in the rental unit. The landlord gave sworn testimony and provided a receipt to confirm that she served the tenants with the Application for Dispute Resolution hearing package on June 7, 2015 by

registered mail. I accept that the tenants were duly served with the 10 Day Notice and the landlord's Application for Dispute Resolution hearing package.

With respect to the tenants failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

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 to support their application and given the sworn evidence provided by the landlord, **I order the tenants' application dismissed without liberty to reapply.**

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled a monetary order for unpaid rent, damage or loss?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord gave evidence that the rental agreement for this tenancy began on August 1, 2013. The rental amount for this unit was established at \$1800.00 payable on the first of each month. The landlord testified that she continued to hold the \$900.00 security deposit that the tenants paid on the start date of this tenancy.

The landlord has applied for an Order of Possession for unpaid rent for the month of May 2015. The landlord testified that the tenants did not pay rent in April 2015. The landlord testified that attempts were made over the course of the month of April 2015 to make payment arrangements and negotiate a settlement of this matter of outstanding rent. The landlord testified that the tenant did not pay the April rent or any portion thereof. The landlord testified that the tenant did not pay rent of \$1800.00 due on May 1, 2015. On May 6, 2015, the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant did not pay the May 2015 rent or the outstanding April 2015 rent after receiving the 10 Day Notice.

The landlord is also seeking a monetary award of \$7200.00 for outstanding rent for the months of April, May, June, and July 2015. The landlord's sworn and undisputed testimony was that the tenants have made no attempts to pay or arrange to pay the

rental arrears as of the date of this hearing. She further testified that the last interactions with the tenants were hostile and she is concerned for her family's safety.

Analysis

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." The sworn and undisputed testimony of the landlord at this hearing is that the tenants have not paid rent for the months of April, May, June or July 2015. I accept the landlord's testimony in all the circumstances and in consideration of the documentary evidence submitted by the landlord.

The tenants failed to pay the May 2015 rent or the rental arrears within five days of receiving the 10 Day Notice to End Tenancy. While the tenants did make an application to dispute the 10 Day Notice, the tenant did not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. The tenants also did not attend this hearing to dispute the Notice to End Tenancy. In accordance with section 46(5) of the *Act*, the tenant's failure to take any actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 16, 2015. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order for unpaid rent for April, May, June and July 2015. I accept the uncontested, sworn evidence offered by the landlord that the tenants have not paid these rental amounts in accordance with the *Act* and the residential tenancy agreement. I am issuing the attached monetary order that includes the landlord's application for \$7200.00 in unpaid rent for four months at \$1800.00 each month for; April, May, June, July 2015.

The landlord testified that she continued to hold a security deposit of \$900.00 plus any interest from August 1, 2013 to the date of this decision for this tenancy. There is no interest payable over this period. I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award. Finally, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the 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.

I issue a monetary Order in favour of the landlords in the amount of \$7300.00 for unpaid rent and the filing fee for this application.

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 13, 2015

Residential Tenancy Branch

