



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR OPL OPC MNR MNSD MNDC FF
For the tenants: CNR

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 landlord applied for an order of possession for unpaid rent or utilities, for landlord’s use of property, and for cause, for a monetary order for unpaid rent or utilities, to keep all or part of the tenants’ security deposit, 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”).

The tenants and two adult daughters of the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions was provided. 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 tenants confirmed that they received the landlord’s documentary evidence prior to the hearing and that they had the opportunity to review the evidence. The tenants also confirmed that they did not submit documentary evidence in support of their application. I find the tenants were served in accordance with the rules of procedure.

Preliminary and Procedural Matter

At the outset of the hearing, the daughters of the landlord were advised that rules of procedure did not provide for amending an application for a greater monetary amount through the submission of documentary evidence. Furthermore, they were advised that their claim for damages to the rental unit and for carpet cleaning costs were premature, as the tenants have not vacated the rental unit, and that I would be determining whether the tenancy ends or continues as a result of this proceeding. Given the above, I dismiss the landlord's claim for damages and carpet cleaning costs with leave to reapply, as those claims are premature. The only monetary claim I will consider are the landlord's claims for unpaid rent, loss of rent as of the date of the hearing, the landlord's claim to retain all or a portion of the tenants' security deposit, and consideration of the recovery of the filing fee.

Issues to be Decided

- Should the 10 Day Notice dated July 20, 2015 be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of their filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2013. Monthly rent in the amount of \$700 is due on the first day of each month. The tenants paid a security deposit of \$350 at the start of the tenancy, which the landlord continues to hold.

The landlord has claimed \$1,850 in unpaid rent and loss of rent comprised of the following:

ITEM DESCRIPTION	AMOUNT
1. Unpaid portion of May 2015 rent	\$100
2. Unpaid portion of June 2015 rent	\$350
3. Unpaid July 2015 rent	\$700
4. Unpaid August 2015 rent	\$700
TOTAL	\$1,850

The tenants claim they paid rent in cash as required and do not owe any rent to the landlord. The tenants stated they have never received a receipt from the landlord for payments made in cash. The daughters of the landlord confirmed that receipts for payments in cash have not been provided but that the tenants still owe \$1,850 in rent as described above. The tenants confirmed that they did not provide any documentary evidence such as bank statements to support that they withdrew \$700 for each of the months of May, June, July and August 2015.

A copy of the 10 Day Notice was submitted in evidence and is dated July 20, 2015. The 10 Day Notice indicates that \$1,150 was owed as of July 1, 2015. The amount of \$1,150 would be comprised of \$100 owing for May 2015, \$350 owing for June 2015, and \$700 owing for July 2015. The effective vacancy date listed on the 10 Day Notice is August 1, 2015. The tenants confirmed they received the 10 Day Notice on their door on July 20, 2015 and disputed it on July 24, 2015, which is within the 5 day timeline provided for under section 46 of the *Act*.

The tenants continue to occupy the rental unit. The landlord has applied for an order of possession and the daughters of the landlord also verbally requested an order of possession during the hearing.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice - As the tenants disputed a 10 Day Notice indicating that \$1,150 was owed as of July 1, 2015, and given that the tenants have the burden of proof to prove that rent was paid as required pursuant to the tenancy agreement, I find the tenants have provided insufficient evidence to prove that rent was paid in full. At the very least, I would have expected the tenants to have submitted bank account documents to support that \$700 in cash was withdrawn from a bank account for the months of May, June and July of 2015. Section 26 of the *Act* requires that tenants pay the rent by the date it is due in accordance with the tenancy agreement. Given the above, I dismiss the tenants' application to cancel the 10 Day Notice due to insufficient evidence. I find the 10 Day Notice to be valid and I uphold the 10 Day Notice dated July 20, 2015.

Order of Possession - Pursuant to section 55 of the *Act*, I must grant the landlord an order of possession once I have dismissed the tenants' application to cancel the 10 Day Notice. Therefore, I grant the landlord an order of possession effective **two (2) days**

after service on the tenants. I find the tenancy ended on August 1, 2015 and that the tenants have been overholding in the rental unit ever since.

I caution the landlord to comply with section 26(2) of the *Act* in the future, which requires that a landlord issue a receipt for all rent payments made in cash.

Claim for unpaid rent/loss of rent – Consistent with my findings above, that the tenants provided insufficient evidence to prove that rent was paid as claimed by the landlord, I find that the tenants still owe \$1,850, comprised of the unpaid rent portion of \$100 for May 2015, \$350 for the unpaid portion of June 2015 rent, \$700 for unpaid July 2015 rent, and loss of rent of \$700 for August 2015. 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. The tenants continue to occupy the rental unit. The landlords will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,850** as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of their **\$50** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$1,900**, comprised of \$1,850 in unpaid rent and loss of rent, plus the \$50 filing fee.

I ORDER the landlord to retain the tenants' full security deposit of \$350 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$1,550**. This order is made in accordance with section 72 of the *Act*.

Conclusion

The tenants' application is dismissed due to insufficient evidence.

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has proven a monetary claim of \$1,900 and has been ordered to retain the tenants' full \$350 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenants to the landlord in the amount of \$1,550. This order must be served on the tenants and 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: August 28, 2015

Residential Tenancy Branch

