



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNSD MNDC FF

For the tenants: CNR ERP RP RR 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 unpaid rent or utilities, for authorization to keep all or part of the security deposit and pet damage deposit, 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”), for an order directing the landlords to make emergency repairs for health or safety reasons, for an order directing the landlords to make regular repairs to the unit, site or property, for an order authorizing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the cost of the filing fee.

The landlords attended the hearing. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the ten minute waiting period had elapsed. The hearing continued with consideration of the landlords’ application.

The hearing process was explained to the landlords, and the landlords were given an opportunity was given to ask questions about the hearing process. Thereafter the landlords 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 evidence relevant to the issues and findings in this matter are described in this Decision.

The landlords testified that the tenants were served with the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) and Application for Dispute Resolution (the “Application”) by registered mail on July 6, 2015. The landlords testified that tenant Y.A.H. was served at the new address provided by that tenant on the tenant’s application for dispute resolution served on the landlords (the cross-application), and tenant J.A.H. was served at the rental unit address as that tenant was still residing at the rental unit as of the date when it was mailed. Canada Post registered mail tracking information was submitted in evidence comprised of two tracking numbers, one for each tenant, which supports the testimony of the landlords. According to the Canada Post registered mail tracking website, both registered mail packages were not signed for or accepted and were returned to sender to the landlords.

Regarding documentary evidence, the landlords testified that both tenants were served with the documentary evidence via registered mail to the same addresses noted above for the Notice of Hearing and Application on July 14, 2015. Two additional registered mail tracking numbers were submitted in evidence. According to the Canada Post registered mail tracking website, neither tenant signed for or accepted the registered mail packages. Those packages were also returned to the sender, the landlords and were marked “unclaimed”.

Pursuant to section 90 of the *Act*, documents served by registered mail are deemed served five days after they are mailed. Given the above, I find that the tenants were deemed sufficiently served under the *Act* as follows: with the Notice of Hearing and Application as of July 11, 2015, and for the documentary evidence, as of July 19, 2015.

Preliminary and Procedural Matter

The landlords testified that on August 13, 2015, they received a letter from the tenants claiming that the tenants had vacated the rental unit as of July 18, 2015. The landlords stated that they entered the rental unit on August 13, 2015 as a result and it appeared that the tenants had vacated the rental unit. The landlords stated that due to the fact the tenants have not returned the rental unit keys and the garage remote control, they were still seeking an order of possession in case the tenants returned to the rental unit.

Issues to be Decided

- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords 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*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on December 6, 2014 and was scheduled to revert to a month to month tenancy after December 6, 2015. Monthly rent in the amount of \$2,350 was due on the sixth day of each month, plus utilities. The tenants paid a security deposit of \$1,175 and a pet damage deposit of \$700 at the start of the tenancy, which the landlords continue to hold.

The landlords' monetary claim is as follows:

Item Description	Amount
1. Unpaid portion of June 2015 rent	\$550
2. Unpaid utilities from start of tenancy to April 30, 2015 bill	\$201.08
3. Unpaid utilities from after April 30, 2015 bill to June 30, 2015	\$201.08
4. Unpaid utilities estimate from July 1, 2015 to August 13, 2015, the date the tenants were found to have vacated the rental unit without returning keys etc.	\$134.05
5. Unpaid July 2015 rent	\$2,350
6. Unpaid August 2015 rent	\$2,350
TOTAL	\$5,786.21

The landlords provided testimony regarding the table above. The landlords position is that the tenants failed to return the rental unit keys and garage remote control, and that the landlords had no way to know the tenants had vacated the rental unit, until they entered the rental unit on August 13, 2015, after having received a letter that day from the tenant alleging that the tenants vacated on July 18, 2015. The landlords clarified that the tenants did not advise them any earlier that they were vacating the rental unit on July 18, 2015 and wanted an order of possession in case the tenants return to the rental unit.

The landlords testified that a 10 Day Notice dated June 15, 2015, was served on the tenants on June 15, 2015 at 7:00 p.m. at the rental unit, and was for \$550 in unpaid rent due June 6, 2015. Although the tenants disputed the 10 Day Notice, as indicated above, the tenants' application was dismissed, without leave to reapply, as the tenants failed to attend this proceeding.

The water utility bill submitted in evidence is dated April 30, 2015 and is in the amount of \$201.08. The landlords submitted a copy of the tenancy agreement addendum that indicates that the tenants will pay Utilities, Natural Gas and Hydro. The landlords did not provide evidence in relation to a natural gas or electrical bill.

The landlords applied for an order of possession and made a verbal request for an order of possession during the hearing.

Analysis

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

Order of Possession - Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenants' application to dispute a notice to end tenancy, and the landlords have made a request for an order of possession. As the tenants failed to attend the hearing, and the tenants' application to cancel the 10 Day Notice dated June 15, 2015, was dismissed, **I grant** the landlords an order of possession pursuant to section 55 of the *Act* **effective immediately** after service on the tenants.

Monetary Order – I accept the undisputed testimony of the landlords that the tenants have failed to pay rent and utilities as claimed and that the tenants have failed to return the rental unit keys and garage remote control. As a result, I find the landlords have met the burden of proof and are entitled to the full amount of their claim, **\$5,786.21**, as described in the table above.

As the landlords' application had merit, I grant the landlords the recovery of their \$100 filing fee. I find the landlords' total monetary claim established is **\$5,886.21**.

I ORDER the landlords to retain the tenants' full security deposit of \$1,175 and full pet damage deposit of \$700 in partial satisfaction of the landlords' monetary claim. **I grant** the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$4,011.21**.

Conclusion

The tenants' application was dismissed in full, without leave to reapply.

The landlords have been granted an order of possession effective immediately after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

The landlords have established a total monetary claim of \$5,886.21 and have been ordered to retain the tenants' full security deposit of \$1,175 and pet damage deposit of \$700 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of \$4,011.21. 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 14, 2015

Residential Tenancy Branch

