



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MCCANDU PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“Act”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to retain the tenants’ security deposit in partial satisfaction of the monetary order requested, pursuant to section 38.

The two tenants, male and female, did not attend the hearing, which lasted approximately 27 minutes. The landlord’s agent, MA (“landlord”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the president of the landlord company named in this application and that he had authority to appear on its behalf as an agent at this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An “interim decision,” dated December 22, 2015, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. The interim decision found that service of the landlord’s 10 Day Notice for Unpaid Rent or Utilities, dated December 2, 2015 (“first 10 Day Notice”) could not be confirmed because the landlord did not provide a witness statement for the posting of the notice on the tenants’ door.

The landlord testified that the tenants were served with the landlord’s direct request application on December 16, 2015 by way of registered mail to the female tenant and by way of personal service to the male tenant. The landlord provided a Canada Post receipt and tracking number as proof of service for the registered mailing and a signed,

witnessed proof of service for the personal service. In accordance with sections 89 and 90 of the *Act*, I find that the female tenant was served with the direct request application on December 21, 2015, five days after its registered mailing, and the male tenant was served on December 16, 2015, personally.

The landlord testified that the male tenant was personally served with the interim decision, notice of this reconvened hearing and the landlord's amended application for dispute resolution ("Application") on January 19, 2016. By way of the interim decision, the landlord was required to serve the decision within three days of receipt. The landlord stated that he inadvertently provided an incorrect fax number to the RTB for the interim decision to be sent to the landlord. The interim decision then had to be mailed and the landlord confirmed that he left town and returned on January 14, 2016. He stated that after going through his mail, he found the interim decision on January 19, 2016, and served it the same day upon the tenants.

The landlord provided a signed, witnessed proof of service as well as a receipt signed by the male tenant indicating that he received the above documents on behalf of himself and the female tenant. In accordance with section 89(2)(c) of the *Act*, I find that both tenants were served on January 19, 2016 with the landlord's Application for the purposes of the order of possession. In accordance with section 89(1)(a) of the *Act*, I find that only the male tenant, not the female tenant, was served with the landlord's Application on January 19, 2016 for the purposes of the monetary order. I explained to the landlord that leaving a copy of the Application with a person residing with the tenant is only permitted for an order of possession application, not for a monetary order application. Therefore, the order of possession issued in this decision is effective against both tenants, while the monetary order is only effective against the male tenant not the female tenant.

Preliminary Issue – 10 Day Notices Service

The landlord testified that he served both tenants with the first 10 Day Notice, with an effective move-out date of December 15, 2015, by posting it to the tenants' rental unit door on December 2, 2015. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's first 10 Day Notice on December 5, 2015, three days after its posting.

The landlord stated that he served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 2, 2016, with an effective move-out date of January 15, 2016 ("second 10 Day Notice"), by way of posting it to the tenants' rental unit door on

January 2, 2016. The landlord provided a signed, witnessed proof of service with this Application. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's second 10 Day Notice on January 5, 2016, three days after its posting.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 2, 2016, with an effective move-out date of February 15, 2016 ("third 10 Day Notice") was served upon the tenants on February 2, 2016, by way of posting it to the tenants' rental unit door. The landlord stated that a witness saw this posting. However, the landlord did not provide a copy of the third 10 Day Notice or the signed, witnessed proof of service with this Application. Therefore, I cannot confirm service of this third 10 Day Notice without a copy of the notice.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include all unpaid rent to date, totalling \$2,840.00, including for January and February 2016. The landlord filed an amendment to its Application to include January 2016 rent and served both tenants with it. However, the landlord did not include February 2016 as it was not yet due at that time. I find that the tenants are aware that rent is due on the first day of each month as per their tenancy agreement. The tenants continue to reside in the rental unit, despite the fact that two 10 Day Notices required them to vacate earlier, for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claims for increased rent, despite the fact that they did not attend this hearing.

Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 15, 2015 for a fixed term of one year to end on October 31, 2016, after which it will transition to a month-to-month tenancy. Monthly rent in the amount of \$1,050.00 and monthly utilities in the

amount of \$130.00 are both payable on the first day of each month. A security deposit of \$525.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement with its Application. The landlord testified that the tenants continue to reside in the rental unit.

The landlord issued the first 10 Day Notice, indicating that rent in the amount of \$1,050.00 and utilities in the amount of \$130.00 were due on December 1, 2015. The landlord issued the second 10 Day Notice, indicating that rent in the amount of \$1,050.00 and utilities in the amount of \$130.00 were due on January 1, 2016. The landlord provided a copy of both notices. The landlord issued the third 10 Day Notice indicating that rent in the amount of \$1,050.00 and utilities in the amount of \$130.00 were due on February 1, 2016.

The landlord confirmed that rent payments of \$300.00 on December 7, 2015 and \$400.00 on January 21, 2016 were made by the tenants. The landlord confirmed that he issued rent receipts to the tenants indicating "use and occupancy only" for these rent payments. The landlord stated that \$350.00 in rent and \$130.00 in utilities are still due for December 2015, after accounting for the above payments. The landlord confirmed that 1,050.00 in rent and \$130.00 in utilities are due for each of January and February 2016.

The landlord seeks a monetary order of \$2,450.00 for unpaid rent and \$390.00 for unpaid utilities, totalling \$2,840.00, from the tenants.

Analysis

Section 55 of the *Act* states the following, in part:

- 55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*
- (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*
- (a) a notice to end the tenancy has been given by the tenant;*
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired...*

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on December 1, 2015, within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on December 15, 2015, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 15, 2015. As this has not occurred, I find that the landlord is entitled to a 2 day Order of Possession against both tenants.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent and utilities totalling \$1,660.00 for December 2015 and January 2016. Therefore, I find that the landlord is entitled to \$1,660.00 for the above period.

The tenants were required to vacate the rental unit by December 15, 2015, the effective date on the 10 Day Notice. As per the landlord's evidence, the tenants continue to reside in the rental unit, causing loss to the landlord under section 7(1) of the *Act*. Rent of \$1,050.00 was due on February 1, 2016. Therefore, I find that the landlord is entitled to \$1,050.00 in rental arrears for the entire month of February 2016, despite the fact that this hearing was held on February 4, 2016. I make this finding because the landlord may have to serve the tenants with the order of possession, possibly enforce the order of possession, examine the rental unit, repair any potential damage, and possibly advertise and attempt to re-rent the unit.

The landlord continues to hold the tenants' security deposit of \$525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$2,315.00 against the male tenant only as follows:

Item	Amount
Unpaid December 2015 Rent	\$1,050.00
Unpaid December 2015 Utilities	130.00
Less Payment made by Tenants	-300.00
Unpaid January 2016 Rent	1,050.00
Unpaid January 2016 Utilities	130.00
Less Payment made by Tenants	-400.00
Unpaid February 2016 Rent	1,050.00
Unpaid February 2016 Utilities	130.00
Less Security Deposit	-525.00
Total Monetary Award	\$2,315.00

The landlord is provided with a monetary order in the amount of \$2,315.00 in the above terms and the male tenant must be served with this Order as soon as possible. Should the male tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: February 05, 2016

Residential Tenancy Branch

