



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 353178 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mnd, mnr, mnsd, opb, opc, opr, ff, cnr, cnc, mt, ff

Introduction

The tenants have applied for an order cancelling a 10 day Notice to End Tenancy (for unpaid rent), and an order cancelling a One Month Notice to End Tenancy . The landlord has applied for an Order of Possession, a Monetary Order for unpaid rent and the landlord's filing fee, and to retain the tenant's security deposit.

The landlord was represented at the hearing. The tenants did not attend. The conference call line was open at the scheduled hearing time, and remained open and was monitored for over ten minutes, but the tenants failed to join the conference call hearing during this period. The landlord confirmed that he had been served with the tenants' application on January 8, 2016, and that he subsequently served the tenants with the landlord's application by registered mail on January 13, 2016. The landlord also testified he is aware they received the landlord's application materials, as he witnessed the tenants signing for their registered mail.

Issues to Be Decided

- Is the 10 Day Notice to End Tenancy dated January 2, 2016 effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- If not, is a One Month Notice To End Tenancy dated December 27, 2016 effective to end this tenancy?
- Is there rent money due and payable by the tenants to the landlord?
- Is it appropriate to order retention of the tenants' security deposit?
- Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This tenancy began September 15, 2015. Monthly rent is \$800.00 payable on the first day of each month. A security deposit of \$400.00 was paid. Rent for January and February are unpaid. On December 27, 2015, the landlord served the tenants with several One Month Notice To End Tenancy documents, all for different reasons, and all effective to end the tenancy January 31, 2016. When January rent was not paid as required, a 10 Day Notice To End Tenancy was posted on the tenants' door January 2, 2015. The tenants remain in the premises.

Analysis

The fact that the tenants' filed a dispute of both the 10 day and the one month notices confirms that they received these notices. In the absence of any submissions or testimony at the hearing from the tenants upon which to make a decision as to their claim to cancel these notices, I have dismissed their application in full, with no liberty to reapply.

Turning to the landlord's application for an Order of Possession based upon the 10 day Notice, it is clear by virtue of section 26(1) of the Residential Tenancy Act that the tenants must pay rent when it is due under the tenancy agreement. The landlord was therefore entitled in law to serve the notice ending this tenancy, when January rent was not paid as and when due. Upon receipt of that notice, the tenants should have paid the full rental arrears within the required 5 day period, in order to have the tenancy continue. The tenants failed to do so, and although they filed a dispute of the Notice, they failed to attend the hearing, and have provided no reason as to why the notice should be cancelled. The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenants' claim is dismissed in full.

The 10 Day Notice is found effective to end this tenancy, and the landlord has established a right to possession. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement. I need not deal with the One Month Notices, as the tenancy ends based upon the 10 Day Notice

I accept that no rent has been paid for January or February, but the tenant have remained in occupation of the premises. I accept that the landlord will suffer a full loss of rental income for both January and February, and since they are overholding, the tenants are liable for this loss, which totals \$1,600.00. The landlord is also awarded \$100.00 as recovery of the landlord's filing fee. The landlord is also entitled pursuant to

section 38 of the Residential Tenancy Act to retain the \$400.00 security deposit in partial satisfaction of this award.

Conclusion

The tenants' claim to cancel the notices ending the tenancy is dismissed. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is awarded \$1,700.00. I order, pursuant to section 38(1)(d) that the full amount of the deposit (\$400.00) be retained, in partial satisfaction of this monetary award. I further order that the remaining balance of the award due to the landlord, equalling \$1,300.00, be paid immediately by the tenants to the landlord.

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 23, 2016

Residential Tenancy Branch

