



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF; CNR, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for his application from the tenants, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 12, 2016 ("10 Day Notice"), pursuant to section 46; and
- other unspecified relief.

The landlord and the two tenants, male and female, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 36 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord testified that the tenants were served with the 10 Day Notice on July 12, 2016 by way of registered mail and June 13, 2016 in person. The tenants confirmed receipt of the landlord's 10 Day Notice but could not recall the exact date, saying that they thought they received it on June 12, 2016. The notice indicates an effective move-out date of June 22, 2016. In accordance with sections 88 and 90 of the *Act*, I find that

the tenants were duly served with the landlord's 10 Day Notice on June 13, 2016 in person.

At the outset of the hearing, the tenants confirmed that they did not have their own application in front of them, despite searching for it during the hearing. The tenants confirmed that they had applied to dispute the 10 Day Notice but did not know why they applied for "other" relief. Accordingly, the tenants' application for other unspecified relief is dismissed without leave to reapply, as they did not provide any evidence to support this claim.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the name of the female tenant, as the female tenant confirmed her legal name during the hearing, which was stated incorrectly on the landlord's application. I find no prejudice to either party in making the above amendment, as the female tenant's correct legal name must be stated in order for this decision and accompanying two orders to be effective against her.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include August 2016 rent of \$850.00. 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 a 10 Day Notice 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, as they admitted during the hearing that they had not paid August 2016 rent to the landlord.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

The tenants testified that this tenancy began on June 1, 1996. The landlord said that he purchased the rental unit and assumed this tenancy in June 2015. Both parties agreed that no new written tenancy agreement was signed with the current landlord. Both parties agreed that monthly rent in the amount of \$850.00 is payable on the first day of each month. The tenants said that they paid a security deposit of \$425.00 to the former landlord and that they were told that the deposit was used by the former landlord. The current landlord testified that he did not receive a security deposit from the former landlord for this tenancy. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice indicating that unpaid rent of \$2,550.00 was due on June 1, 2016, which includes \$850.00 for each month from April to June 2016.

The landlord seeks a monetary order of \$4,250.00 from the tenants. The tenants agreed that they did not pay rent to the landlord, totalling \$4,250.00, which includes \$850.00 for each month from April to August 2016. The landlord also seeks to recover the \$100.00 filing fee for his application from the tenants.

Analysis

The tenants agreed that they failed to pay the full rent due on June 1, 2016, within five days of receiving the 10 Day Notice. Although the tenants made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice, they did not provide a valid reason under the *Act* for not paying the full rent. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days led to the end of this tenancy on June 23, 2016, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by June 23, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. I advised both parties about the above decision during the hearing.

Section 26 of the *Act* requires the tenants to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *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.

Both parties agreed that the tenants failed to pay rent totalling \$4,250.00 from April to August 2016. Therefore, I find that the landlord is entitled to \$4,250.00 in rental arrears from the tenants.

As the landlord was successful in his Application, I find that he is entitled to recover the \$100.00 filing fee paid for his Application.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) 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 \$4,350.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The tenants' entire application is dismissed without leave to reapply.

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: August 05, 2016

Residential Tenancy Branch