



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

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

- an order of possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The landlord GG (the landlord) attended the hearing. The tenants EP and DS attended the hearing.

Service of Dispute Resolution Package and Evidence

The tenants admitted service of the dispute resolution package but did not receive the landlords' evidence. The landlords did not provide their evidence to the Residential Tenancy Branch until 2 August 2016. The landlords' evidence package includes, among other documents, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) and a demand for payment of utilities.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) establishes that evidence from the applicant must be submitted not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, qualified by the words "not less than", the last day for the landlords to file and serve their evidence was 27 July 2016.

This evidence was not served within the timelines prescribed by rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the Rules). Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit improperly served evidence where it does not unreasonably prejudice one party.

In this case the tenants admitted that they were in possession of the 10 Day Notice the tenants also were in possession of the utilities demand letter. As the tenants were in possession of these documents and the landlords' application made it clear that these were in issue, there is no undue prejudice to the tenants in accepting these documents into evidence. The remaining documents are excluded.

Prior Application

The tenants applied to dispute the 10 Day Notice on 24 May 2016. The tenants did not retrieve the notice of hearing documents from the government agent's office. The tenant DS testified that he believed that the documents would be mailed to the tenants. No one attended the teleconference hearing for the tenants' application. The tenants' application was dismissed with leave to reapply on 27 June 2016. The tenants have not refiled their application.

Issue(s) 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

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

The landlord testified that the original tenancy began in approximately 2014 with other tenants. At some point the tenants DS and EP began residing in the rental unit. The landlord testified that that the tenant EP would generally provide the rent to the landlord.

There is no written tenancy agreement for this tenancy. Monthly rent is \$1,200.00 and is due on the first. The landlord testified that the terms of the tenancy agreement are that in addition to rent, the tenants are responsible for their utility use. The landlord testified that this is indicated on the tenants' shelter information forms prepared for the Ministry of Social Development and Social Innovation.

The landlord testified that she delivered a utility demand letter on 16 April 2016 by personally handing it to the tenant EP. The tenant EP did not dispute this. That letter sets out that the tenants have arrears in the amount of \$983.05.

On 17 May 2016, the landlord personally served the tenant DS with the 10 Day Notice. The 10 Day Notice was dated 17 May 2016 and set out an effective date of 31 May 2016. The 10 Day Notice set out that the tenants had rent arrears in the amount of \$66.00 and utility arrears in the amount of \$983.05.

The landlord testified that the tenants informed her that they would be vacating. The landlord testified that there is currently \$1,799.00 in rent arrears and \$1,311.05 in utility arrears. The landlord did not request to amend the landlords' application at the hearing to include the full amount of arrears.

The tenants admit that there are rent and utilities arrears; however, the tenants say that this issue is the result of issues with benefits received from the Ministry of Social Development and Social Innovation. The tenants did not raise any argument with respect to waiver.

The tenants testified as to various unrelated issues in the tenancy.

The landlords claim for \$1,049.05:

Item	Amount
Unpaid April Rent	\$33.00
Unpaid May Rent	33.00
Unpaid Utilities	983.05
Total Monetary Order Sought	\$1,049.05

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no evidence before me that indicates that the tenants were entitled to deduct any amount from rent.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice. Subsection 46(6) of the Act, permits a landlord to end a tenancy pursuant to section 46 where utility amounts owing under a tenancy agreement are unpaid more than thirty days after a demand has been issued.

The evidence indicates that the oral tenancy agreement between the parties is that the tenants are responsible for paying utilities under the tenancy agreement. The landlord made a demand for payment on 16 April 2016. The tenants admit that there are arrears for rent and utilities.

As the tenants have failed to pay their rent in full when due and utilities within thirty days of receiving the demand letter, I find that the 10 Day Notice issued 17 May 2016 is valid. As such, the landlords were entitled to possession of the rental unit on 31 May 2016, the effective date of the 10 Day Notice. As this date has now passed, the landlords are entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenants admit that they have rent and utilities arrears. I find that the landlords are entitled to these amounts. I issue a monetary order in the landlords' favour in the amount of \$1,049.05, to enable the landlords to recover unpaid rent and utilities from the tenants.

Conclusion

The landlords are provided with a formal copy of an order of possession. Should the tenant(s) 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 landlords' favour in the amount of \$1,049.05 under the following terms:

Item	Amount
Unpaid April Rent	\$33.00
Unpaid May Rent	33.00
Unpaid Utilities	983.05
Total Monetary Order	\$1,049.05

The landlords are provided with this order in the above terms and 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: August 04, 2016

Residential Tenancy Branch

