



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, CNR, O

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords named only Tenant TH (the tenant) in their application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- other remedies, which related to requests for repairs and the condition of the rental unit during the course of this tenancy.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to ask questions of one another.

The landlords provided written evidence and sworn testimony that they issued two 10 Day Notices to the tenants. The first of these was a September 9, 2016 Notice that was issued on an old version of the approved forms prepared by the Residential Tenancy Branch. Although the information on the original 10 Day Notice was correct and may very well have been sufficient to be considered a valid 10 Day Notice, the landlords issued a new 10 Day Notice on September 28, 2016 on the current approved form. The tenant confirmed that she received the first of these Notices posted on her door, as well as the second 10 Day Notice handed to her on September 28, 2016. I find that the 10 Day Notices were served to the tenants in accordance with section 88 of the *Act*.

The landlords confirmed that the tenant handed them a copy of the tenants' application to cancel the 10 Day Notice and dispute resolution hearing package on September 28, 2016. I am satisfied that the tenants served their hearing package to the landlords in accordance with section 89 of the *Act*.

The tenant confirmed that she received a copy of the landlords' dispute resolution hearing package, identifying only her as the respondent in their application. I am satisfied that the landlords served the respondent in their application with their hearing package in accordance with section 89(1) and (2) of the *Act*.

The tenant also confirmed that she had received copies of the landlords' written evidence package. The tenant did not submit any written evidence. I am satisfied that the landlords' served their evidence package to the tenant in accordance with section 88 of the *Act*.

At the hearing, the landlords' counsel requested an amendment to the original \$2,500.00 monetary award for unpaid rent identified in the landlords' application to \$3,750.00, the current amount of unpaid rent owing. As the tenant confirmed that she realized that an additional \$1,250.00 in unpaid rent had become owing since the landlords submitted their application, I allowed the landlords to increase the amount of their requested monetary award to \$3,750.00 to reflect these changed circumstances.

Issues(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to retain all or a portion of the security deposit for this tenancy in partial satisfaction of the monetary award requested? Are the landlords entitled to recover their filing fee for this application from the tenant? Should any other orders be issued with respect to this tenancy?

Background and Evidence

This tenancy commenced as a one-year fixed term tenancy on August 1, 2012. At the expiration of the initial term, the tenancy continued as a periodic tenancy. The landlords submitted undisputed written evidence that Tenant NB has not been residing in the rental unit during 2016. Monthly rent in the amount of \$1,250.00 is payable in advance on the first of each month. The landlords continue to hold the tenants' \$625.00 paid on or about July 25, 2012.

The landlords submitted undisputed sworn testimony and written evidence that the tenant failed to pay her rent for September 2016. After issuing the 10 Day Notices, the

tenant confirmed that she has not paid anything towards either her September 2016 rent, or for the months of October and November 2016. The tenant testified that she had lost her job and was attempting to obtain amounts owing from her previous employer, but had been unsuccessful in doing so thus far. She said that she had been seeking alternate accommodations, but had not been able to find anything yet.

The tenant identified a number of concerns regarding the speed at which repairs were conducted by the landlords during the course of this tenancy, as well as ongoing concerns about mould and contact from the landlords. At the hearing, she said that there is black mould in the rental unit, but provided nothing further in this regard. Other than a few sentences in her application for dispute resolution, the tenant provided no written or photographic evidence, to support any assertion that the landlords had in some way failed to abide by the terms of the tenancy agreement between the parties. The tenant confirmed that she had not received any decision from an arbitrator allowing her to deduct any portion of her rent for any loss of services during her tenancy.

Analysis

Subsection 26(1) of the *Act* reads as follows:

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The tenant failed to pay the \$1,250.00 in rent identified as owing for September 2016 in full in the 10 Day Notices within five days of receiving both of those Notices. The tenant gave sworn testimony that she has also failed to pay rent for October and November 2016, and had no legal authorization to discontinue paying her monthly rent. In accordance with section 55 of the *Act*, I dismiss the tenants' application in its entirety and I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

I find that there is undisputed evidence that rent totalling \$3,750.00 remains owing for the months of September, October and November 2016 for this tenancy. In accordance with section 67 of the *Act*, I allow the landlords a monetary award of \$3,750.00 in unpaid rent from the tenant, the respondent in their application.

In accordance with sections 38 and 72 of the *Act*, I allow the landlords to retain the \$625.00 security deposit for this tenancy in partial satisfaction of the monetary award issued in the landlords' favour.

As the landlords have been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

The tenants' application is dismissed. I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant 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 under the following term, which allows the landlords to recover unpaid rent and their filing fee, and to retain the security deposit:

Item	Amount
Unpaid September 2016 Rent	\$1,250.00
Unpaid October 2016 Rent	1,250.00
Unpaid November 2016 Rent	1,250.00
Less Security Deposit	-625.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$3,225.00

The landlords are provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 7, 2016

Residential Tenancy Branch

