



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

For the tenants: CNR FF

For the landlord: FF MSD MNR OPR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant(s) requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord attended the hearing by way of conference call, the tenants did not.

The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without liberty to reapply.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package on November 15, 2016, by way of registered mail. The landlord provided Canada Post tracking numbers in his evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on November 20, 2016, five days after its registered mailing.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 5, 2016 ("10 Day Notice"), on November 5, 2016, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on November 8, 2016, three days after its posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and losses pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

Background and Evidence

The landlord testified regarding the following facts. This six month fixed term tenancy began on October 1, 2016. Monthly rent in the amount of \$1,500.00 is payable on the 27th day of each month. A security deposit of \$750.00 was paid by the tenants and the landlord continues to retain this deposit. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of November 15, 2016. The notice states that the tenants failed to pay rent of \$1,500.00 on October 27, 2016. The landlord said that the tenants have not paid rent of \$1,500.00 for the months of November and December 2016. The landlord seeks a monetary order of \$3,000.00 for the above period as well as recovery of the \$100.00 filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on November 10, 2016, within five days of being deemed to have received the 10 Day Notice. One tenant, RL, did make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice, but did not attend the hearing today. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on November 15, 2016, 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 November 15, 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*.

Section 7(1) of the *Act* establishes that a tenant who does 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 a tenant(s)' 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 of \$1,500.00 for November and December 2016, inclusive. Therefore, I find that the landlord is entitled to \$3,000.00 in rental arrears for the above period.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee.

The landlord continues to hold the tenants' security deposit of \$750.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit of \$750.00 in partial satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service 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 order the landlord to retain the tenants' security deposit of \$750.00 in partial satisfaction of the monetary claim.

I am making an Order in favour of the landlord as follows:

Rental Arrears for November 2016	\$1,500.00
Rental Arrears for December 2016	1,500.00
Less Security Deposit	-750.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$2,350.00

I issue a monetary order in the landlord's favour in the amount of \$2,350.00 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenants 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: December 8, 2016

Residential Tenancy Branch