



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants seek:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) pursuant to section 46.

The landlords seek:

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

The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants did not attend this hearing, which lasted approximately 20 minutes. Therefore, as the applicant did not attend the hearing by 9:10am, and the respondent appeared and was ready to proceed, I dismiss the tenants’ claim without leave to reapply.

The landlords testified that the tenants were served with a notice to end tenancy on November 9, 2016. This notice was not in the prescribed form and the landlords subsequently issued a proper 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 15, 2016 (the “10 Day Notice”), on that same date by hand delivering a copy to the tenants. In accordance with section 88 of the *Act*, I find that the tenants were served with the landlords’ 10 Day Notice on November 15, 2016.

The landlords confirmed receipt of the tenants’ application for dispute resolution dated November 11, 2016, presumably issued in response to the landlords’ initial notice of November 9, 2016. The landlords testified that no subsequent dispute of the 10 Day

Notice was received. While there appears to have been confusion caused by the landlords' initial notice to end tenancy, I find that the tenants' application to cancel that notice was clearly directed at the landlords' attempt to end this tenancy for unpaid rent. In accordance with the powers delegated to me pursuant to paragraph 71(2)(c) of the *Act*, I find that the landlords were sufficiently served with the tenants' application for dispute resolution for the purposes of the *Act*.

The landlords' counsel provided evidence that the landlords' dispute resolution package dated November 25, 2016 and evidence was sent to the tenants on November 28, 2016 by registered mail. The landlords provided Canada Post tracking numbers. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlords' application on December 3, 2016, five days after its mailing.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed the tenants have failed to pay the December rent amount and that the rental arrears as of the date of the hearing is \$5,400.00. The landlords also requested to amend their application to seek the cost of filing fees. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlords' monetary claim from \$3,600.00 to \$5,400.00 as the additional amount of rent arrears could be reasonably anticipated. However, I decline to amend the landlords' Application to include a claim for the cost of filing fees as the landlords have not served the tenants in accordance with Rule 4.6 and adding a new head of claim without proper notice would be prejudicial to the tenants.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlords provided undisputed testimony regarding the following facts. This fixed term tenancy began on September 10, 2016. The current rent is \$1,800.00 payable on the 10th of the month. A security deposit of \$900.00 was paid at the start of the tenancy and is still held by the landlords. The landlords believe that the tenants continue to reside in the rental unit at the time of the hearing.

The landlords testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$3,600.00, the amount initially sought in the 10 Day Notice. The landlords

gave evidence that the tenants have failed to pay the December rent and the current rental arrears total \$5,400.00.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,800.00. I accept the landlords' testimony that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act*. As I have dismissed the tenants' application to dispute the 10 Day Notice I find that the landlords are entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlords' undisputed evidence that the total amount of arrears for this tenancy is \$5,400.00. I issue a monetary award for unpaid rent owing of \$5,400.00 as at December 13, 2016, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' \$900.00 security deposit in partial satisfaction of the monetary award issued in the landlords' favour.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenant(s)**. Should the tenant(s) or any occupant 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 landlords' favour in the amount of \$4,500.00 under the following terms, which allows the landlords to recover unpaid rent for the months of October, November, and December, and to retain the tenants' security deposit:

Item	Amount
Unpaid Rent October	\$1,800.00
Unpaid Rent November	\$1,800.00
Unpaid Rent December	\$1,800.00
Less Security Deposit	-\$900.00
Total Monetary Order	\$4,500.00

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 19, 2016

Residential Tenancy Branch