



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VELLEJO HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

On December 7, 2016, the Landlord submitted an Application for Dispute Resolution for an order of possession, a monetary order for unpaid rent or utilities, to keep the security deposit, and to recover the cost of the filing fee.

The matter was set for a conference call hearing. Both parties attended the teleconference hearing.

The Landlord testified that she served the Tenants with the Application for Dispute Resolution and Notice of Hearing, by attaching a copy to the Tenant's door and by registered mail sent on December 7, 2016. A Canada Post tracking number was provided as evidence of service. I find that the Tenants has been duly served with the Notice of hearing in accordance with the *Act*.

The Parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Tenants called into the hearing late. The Tenant R.T. testified that she faxed documents into the Residential Tenancy Branch yesterday, in response to the Landlord's Application. The Tenant R.T. testified that she received a 1 Month Notice To End Tenancy from the Landlord for Cause. The Tenant testified that she found the 1 Month Notice taped to her door on November 2, 2016. The Tenant testified that the 1 Month Notice was signed and dated by the Landlord.

The Tenant R.T. testified that she believes she disputed the 1 Month Notice.

The Residential Tenancy Branch case management system indicates the Tenant filed an application to dispute the 1 Month Notice on November 10, 2016, but failed to return to the Service BC location to retrieve the documents for service on the Landlord.

On December 6, 2016, the status of the Tenant's application was set to abandoned /terminated.

The Tenants testified that they have submitted documents for consideration one day prior to this hearing. The Tenant R.T. testified that she sent the documents in to the Residential Tenancy Branch late because she just found them. I do not have the Tenant's documents before me.

The Residential Tenancy Branch Rules of Procedure 3.1 states that Tenants must, within 3 days of the hearing package being made available by the RTB, serve each respondent with copies of the Application, and Notice of Hearing.

I find that the Tenants did not follow through on disputing the 1 Month Notice to End Tenancy. The Tenants failed to retrieve the Notice of Hearing package from Service BC and notify the Landlord.

In addition, despite the Tenants having been served with a Notice of Hearing from the Landlord, which I deem was served on December 12, 2016; I have no evidence from the Tenants before me. The Tenants had a month to respond to the Landlord's Application.

I find that the Tenants received a valid 1 Month Notice To End Tenancy for Cause and failed to dispute the Notice or provide any evidence in response.

Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Can the landlord keep the security deposit?

Background and Evidence

The parties testified that the tenancy began on January 1, 2016. Rent in the amount of \$650.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$325.00

The Landlord testified that he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated October 31, 2016.

The Landlord testified that the Tenant was served with the 1 Month Notice by posting it to the Tenant's front door on October 31, 2016. The Landlord testified that he also sent a copy of the 1 Month Notice to the Tenants using Canada Post Registered Mail on October 31, 2016. The Landlord provided the registered mail receipt as proof of service.

The Notice indicates the Tenants must move out of the rental unit by December 2, 2016, and the Notice informed the Tenants that they had ten days to dispute the Notice.

I find that the Tenants received the 1 Month Notice and failed to dispute the Notice.

The Landlord also testified that the Tenants have not paid the rent that is due under the tenancy agreement. The Landlord testified that the Tenants have not paid rent for the following months:

- October 2016 in the amount of \$325.00
- November 2016 in the amount of \$650.00
- December 2016 in the amount of \$650.00

The Landlord testified that the Tenants laughed that that they are going to live in the unit for free for a few months.

The Landlord seeks an order of possession based on the 1 Month Notice, and a monetary order for unpaid rent in the amount of \$1,625.00.

The Landlord seeks to keep the security deposit of \$325.00 in partial satisfaction of the claim for unpaid rent.

The Tenants testified that the Landlord refused to accept a rent payment because the Landlord wants the Tenants to move out. The Tenants testified that the Ministry pays a portion of the rent and because the Landlord refused to accept the rent, the Ministry stopped paying the rent. The Tenants testified that the Landlord refused to accept ½ the rent in November 2016. The Tenants agree that the rent has not been paid for December 2016, and January 2017.

The Tenant V.R. testified that the Tenants have not spoken to the Landlord about the rent since the Ministry stopped paying in November 2016.

Analysis

Based on the evidence before me, and the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants did not dispute the 1 Month Notice and are therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

The tenancy agreement requires the Tenants to pay the rent when it is due. I find that the Tenants have not paid the rent in full for November 2016, and December 2016. The Tenants have not made any effort to pay the rent since November 2016.

Regardless of whether or not the Landlord refused the November 2016, rent, the Tenants have continued to live in the rental unit for November, December, and January, and the Landlord is entitled to receive the rent.

I find that the Tenants owe \$325.00 for November 2016, rent, and \$650.00 for December 2016, rent. The Landlord's claim for rent for ½ of October 2016, and November 2016, was opposed by the Tenants. The Tenants testified the rent was paid for October 2016, and half the rent for November 2016 was paid.

When two parties provide equally believable but opposing testimony, the burden of proof rests with the person making the claim. The Landlord has not provided sufficient evidence to support his claim for \$325.00 for October 2016, rent, and \$650.00 for November 2016 rent.

I find that the Tenants owe the Landlord \$975.00 for unpaid rent.

I order that the Landlord can keep the security deposit of 325.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$1,075.00 comprised of \$975.00 in unpaid rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After setting off the security deposit of \$325.00 against \$1075.00, I grant the Landlord a monetary order in the amount of \$750.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants did not dispute a 1 Month Notice to End Tenancy and are conclusively presumed under section 47(5) of the Act to have accepted that the tenancy has ended.

The Tenants have failed to pay rent in the amount of \$975.00.

The Landlord may keep the security deposit in partial satisfaction of the claim.

The Landlord is granted an order of possession, effective two days after service on the Tenants. I grant the Landlord a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$750.00.

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: January 12, 2017

Residential Tenancy Branch