



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, CNR and MT

Introduction

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

In the application from the landlords identifying tenants TP and CR, as the respondent, the landlords requested:

- an Order of Possession for unpaid rent or utilities, pursuant to section 46; and
- a monetary order pursuant to section 67 for unpaid rent, security and pet deposits.

In the application from the tenants identifying landlords HY and GQ as the respondent, the tenants requested:

- cancellation of the landlords’ 10 Notice to End Tenancy for Unpaid Rent (“10 Day Notice”); and
- more time to make an application to cancel the landlords’ 10 Day Notice, pursuant to section 66;

The landlords were represented at the hearing by agent, AY (the agent). The agent confirmed that she had full authority to speak on behalf and to make decisions for the landlords. The tenants were represented at the hearing by TP, who confirmed he had full authority to speak on behalf and to make decisions for the landlords. 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 cross-examine one another.

Those attending on behalf of both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for unpaid rent? Is the tenant able to cancel this notice?
- Are the landlords entitled to a monetary award for unpaid rent and pet and security deposits?
- Is the tenant entitled to more time to make an application to cancel a 10 Day Notice?

Background and Evidence

This tenancy began on August 15, 2016. Rent was set at \$2,200.00 and was due on the first of the month. On August 26, 2016, the tenants provided the landlords with a cheque for a \$500.00 pet damage deposit and a \$1,100.00 security deposit. The agent explained that the cheques issued by the tenants to

cover the pet damage and security deposits (the deposits) were dishonoured by the bank on September 16, 2016. For this reason, the landlords no longer hold deposits for this tenancy.

On November 9, 2016, a 10 Day Notice was issued to the tenants by hand for unpaid September 2016 rent. The landlords also cited on their 10 Day Notice an unpaid pet and security deposit as reason for the issuance for the 10 Day Notice.

The tenants did not dispute the unpaid rent, nor did they challenge the fact that their deposit cheques were returned.

The landlords are seeking a monetary order for unpaid rent of \$5,400.00. Specifically, they are looking to collect unpaid rent of \$2,200.00 for September 2016 and \$1,600.00 for December 2016, plus the unpaid pet and security deposits amounting to \$1,600.00. The parties explained that \$600.00 of the \$2,200.00 owed for December 2016 rent was paid on December 2, 2016. As mentioned previously, the two cheques given to the landlords on August 26, 2016 for the deposits were dishonoured on September 16, 2016. The landlords waived rent for October 2016 as repairs on the premises were being performed, while the tenants were successful in paying November 2016 rent.

Tenants' Application for More Time

In accordance with subsection 46(4) of the *Act*, the tenants must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants received the 10 Day Notice on November 9, 2016, and applied within five days of receipt on November 16, 2016. It should be noted, that November 11, 2016 was a statutory holiday and that this date does not count towards the five day total. Accordingly, the tenants complied with the five day limit under the *Act* and their application for more time to make an application to cancel the landlord's 10 Day Notice, is moot.

Analysis – Order of Possession

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlords stated that the tenants owe \$2,200.00 for unpaid rent for September 2016 and partial rent of \$1,600.00 for December 2016. The tenants acknowledged under oath that they did owe this money to the landlords. As such, the landlords' 10 Day Notice stands. Pursuant to section 55 of the *Act*, **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 tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Order

The landlords sought a monetary order of \$5,400.00, which was the amount in unpaid September and December 2016 rent, in addition to \$1,600.00 for a returned pet (\$500.00) and security (\$1,100.00) deposit.

Section 20(c)(i) of the *Act* prohibits a landlord from requiring a pet damage deposit other than *when the landlord and tenant enter into the tenancy*. AY testified that this tenancy began on August 15, 2016, but that the landlords did not seek a pet and security deposit until August 26, 2016. Since this date was after the start of the tenancy the landlords' application to include a \$1,600.00 in their monetary order is dismissed.

Pursuant to section 67 of the Act, **I find that the landlords are entitled to receive a monetary order for unpaid rent for September 2016 (\$2,200.00) and partial rent for December 2016 (\$1,600.00), totalling \$3,800.00.** Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

Conclusion

The tenants' application to cancel the 10 Day Notice is dismissed. The landlords' application to end this tenancy on the basis of the 10 Day Notice is allowed. Pursuant to section 55 of the Act, I grant the landlords an Order of Possession to be effective two days after the Order is served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Pursuant to section 67 of the Act, I am making a Monetary Order in favour of the landlords as follows:

Item	Amount
Rental Arrears for September 2016	\$2,200.00
Rental Arrears for December 2016	\$1,600.00
Total Monetary Award	\$3,800.00

The landlords are provided with formal Monetary Orders in the above terms. Should the tenants fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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 5, 2017

Residential Tenancy Branch