



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: MT
Landlord's Application: OPR, MNR

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act"). The tenants are seeking more time to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued November 7, 2016 (the "10 Day Notice") (the "Tenants' Application").

The landlord is seeking an order of possession for unpaid rent and a monetary order for unpaid rent (the "Landlord's Application").

The landlord and tenant J.T. ("Tenant J.T.") appeared at the teleconference hearing and gave affirmed testimony. Tenant J.T. appeared with a witness, E.T., who was affirmed, but did not give any testimony. Tenant B.S. ("Tenant B.S.") did not appear for the hearing which lasted 41 minutes. During the hearing the landlord and Tenant J.T. were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As Tenant B.S. did not attend the hearing, service of the landlord's Application and Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered.

The landlord testified that a copy of the Application and Notice of Hearing was sent to Tenant B.S. by registered mail on December 9, 2016. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Taking into account that the online registered mail tracking information supports the undisputed testimony of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the tenant has been deemed served with the landlord's Application and Notice of Hearing as of December 14, 2016, the fifth day after the registered mailing. Furthermore, as the tenants' hearing for their Application was scheduled to be heard at the same time and date, I am satisfied that Tenant B.S. knew of this hearing.

Preliminary and Procedural Matters

The tenancy agreement names Tenant B.S. as the tenant, however, both Tenant B.S. and Tenant J.T. signed the agreement as tenants on September 1, 2016. The 10 Day Notice issued November 7, 2016 names only Tenant B.S. The landlord's application names only Tenant B.S. as a Respondent and not Tenant J.T. The tenants' Application has been made in the names of both Tenant B.S. and Tenant J.T.

Tenant's Application:

The tenants did not need to seek more time to make an application to cancel the 10 Day Notice when their application was made as it was made within 5 days after they were served with the 10 Day Notice. The tenants, however, did not check off the box in their application to seek cancellation of the 10 Day Notice. In the circumstances, I accept that the tenants, in making their application within 5 days of receipt of the 10 Day Notice, were making an application to dispute the 10 Day Notice and the error made in the application amounts to a typo by not selecting the appropriate box. Accordingly, I amend the tenant's application to include cancellation of the 10 Day Notice.

I find that the landlord is not prejudiced by the amendment as the landlord did not raise any challenges to the tenants' application in this regard and the landlord was aware that the tenants were disputing the 10 Day Notice by bringing their application.

As the tenants' application was made within the 5 days after they were served with the two 10 Day Notices on November 21, 2016, I do not need to consider the tenants' claim for more time to file their application to cancel the 10 Day Notice.

Issue(s) to be Decided

- Are the tenants entitled to cancellation of the 10 Day Notice?
- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The undisputed testimony of the landlord and Tenant J.T. was that a 2 year fixed term tenancy started on October 1, 2016 ending September 31, 2018, pursuant to a written tenancy agreement signed by both Tenant B.S. and Tenant J.T on September 1, 2016. The tenants, however, were allowed to move into the rental unit on September 1, 2016. Rent in the amount of \$550.00 is due on the first day of each month. The landlord received a security deposit in the amount of \$275.00 on September 1, 2016.

The landlord testified that the tenants did not pay their rent when it came due for each of the months of October, November and December 2016; and January 2017. The landlord is seeking an order of possession and a monetary order in the amount of \$2,200.00 for unpaid rent. The landlord's application does not include the unpaid rent for January 2017. The landlord is requesting to amend their application to include the full amount of unpaid rent.

As described above, the landlord and tenant agree that on November 21, 2016, the tenant received two copies of a 10 Day Notice, both dated November 7, 2016 with two different effective dates. The first copy required the tenant to move out on November 22, 2016 and the second copy required the tenant to move out on December 1, 2016.

The 10 Day Notices showed unpaid rent in the amount of \$1,100.00 which was due on November 1, 2016.

Tenant J.T. agreed that the tenants had not paid rent for each of the months of October, November and December 2016; and January, 2017.

Analysis

Based on the undisputed testimony of the landlord and Tenant J.T. provided during the hearing, and on the balance of probabilities, I find the following.

Tenants' Application:

I find that the tenants were required to pay rent in the amount of \$550.00 for each of the months of October, November and December 2016; and January 2017 and did not do so.

Although it is not necessary to deal with both 10 Day Notices, I find that both 10 Day Notices comply with s.52 of the *Act* and that the landlord served both 10 Day Notices in

accordance with the *Act*. Therefore, I find that the tenants are not entitled to cancellation of the 10 Day Notice and I uphold the notice to end the tenancy. Accordingly, I dismiss the tenant's application.

Pursuant to section 55 of the *Act*, when the landlord's notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession. As a result, I find the landlord is entitled to an order of possession

Landlord's Application:

As Tenant B.S. was served with the landlord's Application for a monetary order for unpaid rent and the Notice of Hearing and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlords' claim and is reasonable.

I amend the landlord's application to include the unpaid rent for January, 2017. I find that the amendment is not prejudicial as Tenant B.S. know or ought to have known that rent for January was to be paid when it came due.

I find that the landlord is entitled to monetary award in the amount of \$2,200.00 for unpaid rent for the months of October, November, December 2016; and January 2017 for a total of \$2,200.00.

I find that the landlord is entitled to set off the amount of unpaid rent owed by the tenant against the tenant's security deposit of \$275.00.

Based on the foregoing, I find the landlord is entitled to a monetary order in the amount of \$1,925.00 as follows:

October 2016 Unpaid Rent	\$ 550.00
November 2016 Unpaid Rent	\$ 550.00
December 2016 Unpaid Rent	\$ 550.00
January 2017 Unpaid Rent	\$ 550.00
Subtotal	\$2,200.00
Less Security Deposit	\$ 275.00
Total	\$ 1,925.00

As only Tenant B.S. was named as a Respondent in the landlord's Application, the name of Tenant J.T. will not appear in the style of cause on the orders as she is not a named Respondent.

Conclusion

I dismiss the tenants' application without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the Tenant B.S. 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.

The landlord is entitled to a monetary order against Tenant B.S. in the amount of \$1,925.00 for unpaid rent.

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 27, 2017

Residential Tenancy Branch