



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made December 6, 2016: CNR
Landlord's Application made November 16, 2016: MNR; OPR

Introduction

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

The tenants are seeking to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued December 2, 2016 (the "Tenants' Application").

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

The landlord's agent (the "Landlord") and tenant T.M. (the "Tenant") appeared at the teleconference hearing. Tenant R.M. did not attend. Both the landlord and the tenant gave affirmed testimony. During the hearing the landlord and tenant 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.

The tenant testified that Tenant R.M. moved out of the rental unit on January 4, 2016. As Tenant R.M. did not attend the hearing, service of the landlord's Application and Notice of Dispute Resolution Hearing (the "Notice of Hearing") on Tenant R.M. was considered.

The landlord testified that Tenant R.M. was served the Application and Notice of Hearing by registered mail. The landlord testified that the registered mailing was sent to Tenant R.M. at the rental unit on December 13, 2016. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Taking into account that the online registered mailing tracking information supports the undisputed testimony of the landlord, and in accordance with section 89 and 90 of the *Act*, I find that Tenant R.M. is deemed served with the dispute resolution hearing package as of December 18, 2016, the fifth day after the registered mailing.

Issue(s) to be Decided

- Should the landlord's 10 Day Notice be cancelled?
- 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 landlord and tenant agreed that the tenant started a month to month tenancy on October 1, 2016 pursuant to a written tenancy agreement. The tenant moved in on September 27, 2016. The tenancy agreement was only in the name of Tenant T.M. who signed it on September 24, 2016. Rent is \$850.00 due on the last day of each month for the subsequent month. The landlord received a security deposit on September 24, 2016 in the amount of \$425.00.

The landlord testified that Tenant R.M. was approved to be added to the lease on October 31, 2016. The landlord submitted a copy of the Rental Application signed by Tenant R.M. and an undated email from Tenant T.M. asking that Tenant R.M. be added to the tenancy agreement.

The tenant denied that Tenant R.M. is a tenant on the lease. The tenant testified that Tenant R.M. was never a permanent tenant and that she only stayed in the rental unit temporarily.

The landlord testified that the tenants did not pay the rent of \$850.00 for the month of December 2016 that was due on November 30, 2016.

The landlord testified that Tenant T.M. was served with a 10 Day Notice in person by handing a copy to the tenant on December 2, 2016. The 10 Day Notice named both Tenant T.M. and Tenant R.M. and it was dated December 2, 2016, with an effective move out date of December 12, 2016. The tenant agreed with these particulars.

The landlord testified that the tenants did not pay the rent that was due within five days after service of the 10 Day Notice. The landlord testified that the tenants also did not pay rent in the amount of \$850.00 for January 2017 that was due on December 31, 2016.

The landlord is seeking an order of possession for unpaid rent.

The landlord is also seeking to amend their application to include the full amount of unpaid rent for January, 2017. The landlord is seeking a total monetary order in the amount of \$1,700.00 for unpaid rent for December 2016 and January 2017.

The tenant acknowledged that rent had not been paid for each of the months of December 2016 and January 2017.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows.

I find that Tenant R.M. was a co-tenant and that she was added to the lease on October 31, 2016 after having submitted an application which was approved. I have also taken into consideration that Tenant R.M. was served with the landlord's application and has not appeared at the hearing to dispute it. I also take into account the fact that Tenant R.M is named as a tenant in the tenants' own application.

I find that the tenants were required to pay rent in the amount of \$850.00 for December 2016 and January 2017 and that they did not do so.

I find that the tenants were served with the 10 Day Notice in accordance with section 89 of the *Act*.

As the tenants did not pay rent when it was due and they did not pay the rent amount of \$850.00 within five days of being served with the 10 Day Notice, I find that the tenants are not entitled to cancellation of the 10 Day Notice. Accordingly, I dismiss the tenants' application.

When a tenant's application to dispute a landlord's notice to end a tenancy is dismissed, s. 55 of the *Act* requires me to grant an order of possession if the landlord's notice to end a tenancy complies with section 52 of the *Act*.

I find that the 10 Day Notice complies with section 52 of the *Act*. As a result, I find the landlord is entitled to an order of possession.

I allow the landlord's request to amend their application to include the full amount of unpaid rent as the tenants knew or ought to have known that they were required to pay the rent when due.

I find that the landlord is entitled to a monetary order in the amount of \$1,700.00 for unpaid rent for the months of December 2016 and January 2016.

I allow the landlord to retain the security deposit in the amount of \$425.00 to be applied against the amounts owed by the tenant.

Based upon the foregoing, the landlord is entitled to a monetary order as follows:

December 2016 unpaid rent	\$ 850.00
January 2016 unpaid rent	\$ 850.00
Subtotal	\$1,700.00
Less Security Deposit	\$ 425.00
Total	\$1,275.00

Conclusion

I dismiss the tenants' application without leave to reapply and the tenancy will end on the basis of the 10 Day Notice.

I grant the landlord's application.

Pursuant to section 55, I grant an Order of Possession to the landlord effective two days after service of this Order upon the tenant(s). Should the tenant(s) 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 granted a monetary order in the amount of \$1,275.00 for unpaid rent which must be served on the tenant(s) as soon as possible. Should the tenant(s) fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 26, 2017

Residential Tenancy Branch