



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR OPL MNR MT CNL CNR MNDC

Introduction

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

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- an Order of Possession for landlord's own use pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants requested:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Cause (the 2 Month Notice) pursuant to section 66;
- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for landlord's own use (the 2 Month Notice) pursuant to section 46; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

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.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

The landlord indicated during the hearing that he was only seeking an Order of Possession for Unpaid Rent, and not for his own use. Accordingly, the landlord's application for an Order of Possession for landlord's own use is cancelled. The landlord's 2 Month Notice to End Tenancy for Landlord's Own Use (‘2 Month Notice’), which was issued on the same date as the 10 Day Notice, is withdrawn. As the landlord withdrew his application in regards to the 2 Month Notice, the portion of the tenants' application in response to the 2 Month Notice is cancelled.

The tenants indicated in the hearing that they had made a separate application for monetary compensation scheduled for June 12, 2017 for this same tenancy. RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard, I find the tenants have applied for a monetary award for losses related to this tenancy. As these sections of the tenants' application may be impacted by the other hearing, and are unrelated to the main section of this dispute which is to cancel the 10 Day Notice, I am dismissing the tenants' application for monetary compensation with leave to reapply.

Preliminary Issue—Tenants' Application for an Extension of Time to File their Application for Dispute Resolution

The tenants filed their application for dispute on January 3, 2017, although the landlord testified during the hearing and noted on his proof of service that the notice was served on December 2, 2016. The tenants have the right to dispute the Notice within 5 days after receiving it, unless the arbitrator extends that time according to Section 66 of the *Act*.

Section 66 (1) of the *Act* reads:

The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).

Normally if the tenant does not file an Application within 5 days, they are presumed to have accepted the Notice, and must vacate the rental unit. The landlord testified that the 10 Day Notice was served three different ways: by posting it on the gate of the property, by regular mail, and by registered mail, all on December 2, 2016. The landlord provided a copy of the registered mail receipt and tracking number as part of his evidence. In accordance with section 90(c) of the *Act*, the 10 Day Notice is deemed to have been received 5 days after mailing. The 10 Day Notice is deemed to have been received on December 7, 2016, and the tenants had filed for dispute resolution on January 3, 2017, twenty-seven days later.

Section 66 (1) allows me to extend the time limit established by the *Act* only in exceptional circumstances. The tenants, in their application, stated that due to a fire at the residence they were not aware of the 10 Day Notice until January 2, 2017. The tenants also testified during the hearing that the landlord drove his vehicle into the gate on December 28, 2016, and no notice was on the gate. The tenants testified that due to the fire, the house did not have water or heat, and as a result they were housed by Emergency Services in a hotel. The tenants provided copies of a hotel invoice for a stay from October 5, 2016 through to December 12, 2016. The invoice lists one of the tenants' names, and indicates that it was directly billed to "emergency services".

RTB Policy Guideline #36 clarifies the meaning of "exceptional circumstances" as "*the reason for failing to do something at the time required is very strong and compelling...Some examples*

of what might not be considered 'exceptional' circumstances include...the party did not know the applicable law or procedure".

On the basis of section 66(1) of the *Act*, and the definition provided by Policy Guideline #36, I find that the tenants have met the burden of proof to justify that there is an exceptional reason for the late filing of their application. I accept the tenants' testimony and evidence that they were displaced due to an emergency, and did not receive the 10 Day Notice until much later than the date of deemed service. Under these circumstances, I am allowing the tenants' application for more time to make their application.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled pursuant to section 46 of the *Act*? If not is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on December 1, 2015, with rent in the amount of \$1,600.00 payable on the first day of every month. The landlord did not collect a security deposit for this tenancy, which is noted as "waived" on the written tenancy agreement. The tenancy agreement contained an addendum noting in condition 3 that "If Tenants get a pet, they must advise me and pay the pet deposit". Condition 10 states "Damage deposit was waived as tenant agreed to clean up the house and yard".

The landlord issued the 10 Day Notice on December 2, 2016, indicating an effective move-out date of December 7, 2016. The corrected effective date of the 10 Day Notice is December 17, 2016. The tenants testified that they did not receive the 10 Day Notice until January 2, 2017 as they were displaced due to a fire at the residence. The landlord testified that the 10 Day Notice was served three ways, by regular and registered mail, and by posting it on the gate at the rental address. The notice states that the tenants failed to pay rent in the amount of \$1,600.00 due on December 1, 2016.

The landlord's application was originally submitted by way of the Residential Tenancy Branch's direct request procedure, a procedure that does not require a participatory hearing. In that application, \$1,600.00 was listed as the balance owed for the month of December 2016. The landlord filed an Amendment to his Application on December 22, 2016 with a revised monetary claim in the amount of \$4,350.00 to reflect unpaid rent in the amount of \$1,600.00 for the months of December 2016 and January 2017, as well as filing fees for his two applications in

the amount of \$200.00, reimbursement for his mailing cost in the amount of \$150.00, as well as a request for a \$800.00 pet deposit.

The tenants do not dispute that some rent payments have not been paid for the months of December 2016 and January 2017, and do not possess any proof of such, or an order from an Arbitrator allowing them to withhold all or part of the rent.

The tenants testified that that they had been staying in a hotel since October 2016 due to an emergency situation at the residence caused by an electrical fire. The tenants submitted invoices for their stay at the hotel dating back to October 2016, and they testified that they received no response to letters sent to the landlord, who resides in Edmonton. The tenants testified that there is no local manager, and as their house did not have any water or heat they refused to pay rent, and stopped paying in December 2016. They submitted that this was a true emergency situation, as indicated on the hotel invoice, which was paid by Emergency Services.

The landlord disputes the tenants' testimony that he did not respond to their communication, and testified that he did try to access the property, only to be denied access by the tenants. The tenants responded that on December 28, 2016 the landlord had driven his vehicle into the gate in an effort to intimidate them. The landlord stated that the rent is still outstanding, and disputes the tenants' claim that this was an emergency situation, including the tenants' testimony that there was no heat or water. The landlord testified that the house has not been condemned, and the allegations were unfounded. As rent has not been paid, the landlord is seeking an Order of Possession as well as a Monetary Order.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord and the tenants, I find that the tenants were served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Based on the testimony and evidence provided for this hearing I find that the tenants did not provide sufficient evidence to support their claim that they did not have heat or electricity. The tenants did not provide any reports or receipts, nor was there any witness testimony. On this

basis, I find that the tenants did not have the grounds to withhold, deduct, or reduce the rent payable.

The tenants do not dispute that they have not paid any portion of the outstanding rent, nor do they have the right *under the Act* to deduct or withhold rent. Accordingly I am not allowing the tenants' application to cancel the landlord's 10 Day Notice, and the landlord's application for an Order of Possession is allowed. As of December 17, 2016, the corrected date of the 10 day Notice, the tenancy has come to an end.

As to the application for a monetary order, the tenants do not dispute that they owe \$1,600.00 rent for the months of December 2016 and January 2017. I grant the landlord's application for \$3,200.00 in unpaid rent. The landlord, in his amended application, made an application for recovery of his filing fees for both of his applications. As the landlord was successful in this application I am allowing the landlord to recover \$100.00 for the cost of this application. I am not allowing the landlord's application for the pet deposit as it was not collected at the beginning of the tenancy, and this tenancy has effectively come to an end on December 17, 2016. As mailing costs do not fall under section 72(1) of the *Act*, I am not allowing the landlord's application for recovery of his mailing costs.

Conclusion

The tenants' application to cancel the 10 Day Notice **is dismissed**.

The landlord's application, in part, is allowed. I find that the landlord's 10 day Notice is valid and effective as of December 17, 2016.

The tenants' and landlord's applications pertaining to the 2 Month Notice are cancelled. The 2 Month Notice to End Tenancy is withdrawn

The tenants' application for monetary compensation is dismissed with leave to reapply.

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenants. Should the tenants 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 \$3,300.00 monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, and also allows the landlord to recover his filing fee for this application.

Item	Amount
Unpaid Rent for December 2016	\$1,600.00
Unpaid Rent for January 2017	1,600.00
Recovery of Filing Fee	100.00
Total Monetary Order	\$3,300.00

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: February 17, 2017

Residential Tenancy Branch