



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNR MNSD FF
For the tenants: CNR OLC AS O

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain all or part of the tenants’ security deposit, and to recover the cost of the filing fee. The tenants applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 7, 2017 (the “10 Day Notice”) for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for permission to assign or sublet because the landlord’s permission has been unreasonably withheld and other unspecified relief.

The landlord, two witnesses for the landlord who did not testify, and the tenants attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The tenants confirmed receiving the landlord’s application and documentary evidence package from the landlord and that they had the opportunity to review that evidence prior to the hearing. The tenants testified that they did not serve the landlord with their application or documentary evidence. I find the tenants were sufficiently served with the landlord’s application and documentary evidence under the *Act*. As the tenants failed to serve the landlord with their application, the tenants’ application is **dismissed with leave to reapply** due to a service issue. I note that this decision does not extend any applicable timelines under the *Act*. Both parties have the right to a fair hearing and the

landlord was not aware of the tenants' application as the tenants neglected to serve the landlord.

Preliminary and Procedural Matter

The landlord testified that in addition to the rent owed for February 2017, the tenants have subsequently not paid the rent for March 2017. As a result, the landlord requested to amend his application to include rent owed for March 2017. The parties confirmed that the tenants continue to occupy the rental unit. I find the landlord's request to amend the application does not prejudice the respondent tenants as the tenants would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I permit the landlord to amend his application to add March 2017 loss of rent in the amount of \$2,450.00 to his original monetary claim pursuant to section 64(3) of the *Act*.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is ending, what should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A 36 month (3 year) fixed term began February 1, 2017. Monthly rent in the amount of \$2,450.00 is due on the first day of each month. The parties confirmed that the tenants paid a \$1,225.00 security deposit at the start of the tenancy which the landlord continues to hold.

The landlord's monetary claim is comprised of the following:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid February 2017 rent	\$2,450.00
2. Loss of March 2017 rent	\$2,450.00
TOTAL	\$4,900.00

During the hearing, the parties provided the following testimony:

Tenants' testimony

The tenants affirmed that they attempted to pay February 2017 rent before it was due by part payment by cheque with the remainder to be paid by e-transfer. The tenants stated that the landlord refused their offer and that once they received the 10 Day Notice they could not reach the landlord to pay the full rent even though they stated that they sent texts and emails to the landlord after the 10 Day Notice was served on them. The tenants confirmed that they did not use the landlord's service address to send the full rent payment by registered mail. The tenants confirmed that rent for March 2017 has not been paid.

Landlord's testimony

The landlord confirmed that the tenants requested to pay February 2017 rent in two partial payments via two different methods of payment and the landlord advised the tenants that he wanted one full payment not partial payments of rent. The landlord vehemently denied that he received texts and emails from the tenants after he served the 10 Day Notice and that no attempts to pay the rent have been made by the tenants after the 10 Day Notice was served. The landlord is seeking an order of possession. The landlord affirmed that he has suffered a loss of March 2017 rent in addition to unpaid February 2017 rent.

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, as the tenants failed to serve the landlord with their application, I find that the tenants have effectively not disputed the 10 Day Notice. I also find that the tenants provided insufficient evidence to support that they paid the rent or attempted to pay the rent since being served with the 10 Day Notice. Section 55(2) of the *Act* applies and states:

Order of possession for the landlord

55 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(b) **a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;**

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, and that the tenants' application has been dismissed with leave to reapply due to a service issue and that my decision would not extend the timeline to dispute the 10 Day Notice, I grant the landlord an order of possession effective **two (2) days** after service on the tenants as the tenants continue to occupy the rental unit without paying rent and the deadline to dispute the 10 Day Notice has long since expired. I find the tenancy ended on February 18, 2017 which is the effective vacancy date listed on the 10 Day Notice.

Unpaid rent and loss of rent - Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the oral tenancy agreement which the parties agreed required that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$4,900.00** as claimed for unpaid rent for February 2017 of \$2,450.00 and a loss of rent for March 2017 of \$2,450.00.

As the landlord has succeeded with his application, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$5,000.00** comprised of \$4,900.00 owing for unpaid rent and loss of rent plus the recovery of the cost of the \$100.00 filing fee.

Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$1,225.00 plus \$0.00 in interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$3,775.00**.

Conclusion

The tenants' application was dismissed with leave to reapply due to a service issue however the timeline to dispute a 10 Day Notice has now passed and my decision does not extend any such timelines under the *Act*.

The landlord's application is fully successful. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenant must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$5,000.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$1,225.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$3,775.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: March 15, 2017

Residential Tenancy Branch