



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenants' Application: MT, CNR, OPT
Landlord's Application: OPR, MNR, FF

Introduction

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

The tenants are seeking more time to make an application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 6, 2017 (the "10 Day Notice"); cancellation of the 10 Day Notice; and an order of possession (the "Tenant's Application").

The landlord is seeking an order of possession for unpaid rent; a monetary order for unpaid rent; and recovery of the filing fee for their application from the tenants (the "Landlord's Application").

The landlord's agent (the "Landlord") and Tenant B.J. (the "Tenant") appeared at the teleconference hearing. Tenant C.R. attended the teleconference hearing briefly to give permission for Tenant B.J. to appear as his agent. 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.

Preliminary and Procedural Matters

Tenant B.J. is the only applicant for the tenants. Tenant B.J. and Tenant C.R. are both named as respondents in the landlord's application. Tenant B.J. made two applications for dispute resolution to cancel the 10 Day Notice dated March 6, 2017. The first application was made on March 10, 2017; and the second application was made on

March 14, 2017. The documents indicate that the first application required changes which gave rise to the second application. The first application was made within 5 days after being served with the 10 Day Notice. The second application was made after the 5 days expired. Tenant B.J. is seeking more time to file their application to cancel the 10 Day Notice.

The landlord acknowledged that they were prepared to proceed with the hearing as if the tenant's second application was made within the proper time frame. Therefore, I dismiss the tenant's claim for more time to make an application to cancel the 10 Day Notice as it is not necessary in light of the landlord's stated position.

Tenant B.J. indicated that their claim for an order of possession of the rental unit is based upon their claim to cancel the 10 Day Notice. Therefore, I dismiss the tenant's claim for an order of possession as the tenant's entitlement to occupy the unit will be determined on the basis of their claim to cancel the 10 Day Notice.

Issues to be Decided

- Is the tenant entitled to cancellation of the landlord's 10 Day Notice?
- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to recover the filing fee for their application from the tenants?

Background and Evidence

The undisputed evidence established that the tenants entered into a fixed term tenancy starting October 1, 2015 and ending March 31, 2016. At the end of the fixed term, the tenancy continued on a month to month basis. The market rent for the unit is \$850.00, however, the tenants receive a rent subsidy. The tenants' portion of the market rent is \$304.00 due on the first day of each month. A security deposit in the amount of \$300.00 was paid by the tenants on or about October 1, 2015.

The landlord served a 10 Day Notice dated March 6, 2017 by leaving a copy with Tenant B.J. on March 7, 2017. The effective date on the 10 Day Notice is March 17, 2017. Tenant B.J. acknowledged receiving a copy of the 10 Day Notice on March 7, 2017.

The landlord testified that the tenants had a rent credit of \$2.00 as at March 1, 2017. The landlord testified that the tenants did not pay their rent when it was due on March 1,

2017. The landlord is seeking a monetary order in the amount of \$302.00 for unpaid rent for the month of March 2017.

The landlord testified that the tenants did not pay the rent due for the month of April 2017. However, the landlord indicated that they were not seeking rent for the month of April 2017 from the tenants.

Tenant B.J. agreed that rent was not paid for each of the months of March and April 2017 and that the unpaid rent owing for March 2017 is \$302.00.

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

The landlord is also seeking to recover their \$100.00 filing fee for their application from the tenants.

Analysis

Based on the evidence and testimony, and on the balance of probabilities, I find the following.

I find that the landlord is entitled to a monetary order in the amount of \$302.00 for unpaid rent for the month of March 2017. In making this finding I have taken into consideration the fact that Tenant B.J. acknowledged that the tenants owe \$302.00 for unpaid rent for the month of March 2017.

I find that the tenants were duly served with the 10 Day Notice on March 7, 2017 in accordance with section 88 of the *Act*. In making this finding I have taken into consideration the fact that Tenant B.J. acknowledged receipt of the 10 Day Notice on this date.

I find that the 10 Day Notice complies with section 52 of the *Act* and that it is valid. I also find that the 10 Day Notice required the tenants to vacate the rental unit on March 17, 2017.

Based upon the foregoing, I find that the landlord is entitled to an Order of Possession.

As the landlord's application is successful, I find that the landlord is entitled to recover the \$100.00 filing fee for their application from the tenants.

Pursuant to section 72 of the *Act*, I allow the landlord to apply the tenants' security deposit in the amount of \$300.00 against the amounts owed by the tenants.

Based upon the foregoing, I find that the landlord is entitled to a monetary order in the amount of \$102.00 as follows:

March 2017 Unpaid Rent	\$302.00
Filing Fee	\$100.00
Subtotal	\$402.00
Less Security Deposit	\$300.00
Total Monetary Order	\$102.00

Conclusion

The landlord is granted a monetary Order in the amount of \$102.00 for unpaid rent for the month of March 2017 and the filing fee, less the security deposit. This Order must be served on the tenants as soon as possible. Should the tenants 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.

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.

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: April 19, 2017

Residential Tenancy Branch