



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: CNR
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 to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on March 3, 2017 (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 filed an amendment to their application to increase the landlord's monetary claim from \$1,025.00 to \$2,325.00. The amendment increases the landlord's monetary claim by the amount of rent due for the month of April 2017 and the amount of the \$100.00 filing fee (the "Landlord's Amended Application").

This matter was set for hearing by telephone conference call at 11:00 A.M. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenant did not attend the hearing by 11:10 A.M., and the landlord appeared and was ready to proceed, I dismiss the tenants' claim without leave to reapply.

The landlord gave affirmed testimony. During the hearing the landlord was 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 the tenants did not attend the hearing, service of the landlord's Application, and Notice of Dispute Resolution Hearing (the "Notice of Hearing") were considered.

Rule 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") and Residential Tenancy Policy Guideline #23 (F) permits an Arbitrator to amend an application at a hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the application was initially filed. Accordingly, a landlord may request such an amendment orally at the time of the hearing.

Section 72 of the *Act* grants an Arbitrator the authority to order payment of a filing fee to a successful applicant. Therefore, the landlord was not required to amend their application to include the \$100.00 filing fee as part of their monetary claim for the matter to be considered.

Based upon the foregoing, I find that the landlord did not need to submit or serve an amended application in the circumstances. Therefore, I find that it is not necessary to consider service of the landlord's amended application.

The landlord testified that they sent a copy of the landlord's Application and Notice of Hearing by registered mail on March 14, 2017 to each of the tenants in separate mailings. Taking into account the undisputed testimony of the landlord, and in accordance with section 89 and 90 of the *Act*, I find that the tenants are deemed served with the landlord's Application and Notice of Hearing as of March 19, 2017, the fifth day after the registered mailings. Furthermore, as the tenants' hearing for their Application was scheduled to be heard at the same time and date, I am satisfied that the tenants knew of this hearing.

Issues to be Decided

- 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?

Background and Evidence

The undisputed evidence established the tenants entered into a one year fixed term tenancy starting on June 1, 2016 and ending May 31, 2017. The landlord reduced the monthly rent from \$1,250.00 to \$1,200.00 effective January 1, 2017. Rent in the amount of \$1,200.00 is due on the first day of each month. The tenants provided a security deposit in the amount of \$625.00 on or about May 31, 2016.

The landlord testified that the tenants only paid rent in the amount of \$1,125.00 for the month of December 2016. The landlord testified that the tenants only paid \$300.00 for the rent due for the month of March 2017. The landlord testified that the tenants did not pay any of the rent that was due for the month of April 2017.

The landlord testified that they served the tenants with a copy of the 10 Day Notice personally by leaving two copies with Tenant A.M. on March 3, 2017.

The landlord is seeking a total monetary claim for \$2,225.00 for unpaid rent as follows:

Unpaid rent for December 2016	\$ 125.00
Unpaid rent for March 2017	\$ 900.00
Unpaid Rent for April 2017	\$1,200.00
Total Unpaid Rent	\$2,225.00

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

Analysis

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

As the tenants were served with the landlord's Notice of Hearing and Application and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

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*.

Based on the above and the evidence before me, I find that the 10 Day Notice complies with s.52 of the *Act* and it is valid. As a result, I find the landlord is entitled to an order of possession.

I find that the tenants did not pay the full amount of rent that was due for each of the months of December 2016, March 2017 and April 2017. Therefore, I find that the landlord is entitled to a monetary award in the amount of \$2,225.00 for the unpaid rent that is outstanding for each of these months.

Pursuant to Rule 4.3 of the Rules of Procedure and Policy Guideline #23(F), I amend the landlord's application to include the full amount of rent that is unpaid up until the hearing. I find that the tenants knew or ought to have known that they were required to pay rent in the amount of \$1,200.00 for the month of April 2017.

In accordance with the authority granted under section 72 of the *Act*, I find that the landlord is entitled to recover the \$100.00 filing fee for their application from the tenants as their application is successful.

Pursuant to section 72(2)(b) of the *Act*, I allow the landlord to apply the tenants' security deposit in the amount of \$625.00 against the amounts owed by the tenants.

Based upon the foregoing, I find that the landlord is entitled to a monetary award in the total amount of \$1,700.00 as follows:

Unpaid rent for December 2016	\$ 125.00
Unpaid rent for March 2017	\$ 900.00
Unpaid Rent for April 2017	\$ 1,200.00
Filing Fee	\$ 100.00
Subtotal	\$ 2,325.00
Less Security Deposit	\$ 625.00
Total Monetary Award	\$ 1,700.00

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is granted a monetary Order in the amount of \$1,700.00 for unpaid rent and their filing fee, less the security deposit. This monetary 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.

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 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 07, 2017

Residential Tenancy Branch