



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, RP

Introduction

This hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross applications based on a 10 Day Notice for Unpaid Rent or Utilities dated March 5, 2017 (the “10 Day Notice”). The landlords apply for an order of possession for unpaid rent and a monetary order for unpaid rent. The tenants apply for an order cancelling the 10 Day Notice and for an order requiring the landlords to make repairs.

One of the tenants and two of the landlords attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to respond to the submissions of the other party.

The landlords acknowledged receipt of the tenants’ application and notice of hearing. The tenant attending the hearing advised that she had sent supporting evidence to the Residential Tenancy Branch by email to Service BC but had not sent the same to the landlords. The tenant’s evidence was not before me.

The tenant testified that she had not received the landlords’ application, notice of hearing and supporting evidence. The landlord provided affirmed testimony that he sent two identical packages containing these materials by registered mail. Registered mail receipts and tracking information for both packages were in evidence, indicating that the packages were sent by registered mail on March 23, 2017. The tracking information indicates that two notices were left for each package at the rental unit address and that the packages were returned to sender after they were not picked up. The tenant says she does not know why she did not receive any of these notices. In accordance with sections 89 and 90 of the Act, the tenants are deemed to have been served with the landlords’ materials on March 28, five days after they were mailed.

Over the course of the hearing the tenant indicated that she did not wish to remain in the rental unit because of its poor condition and the landlords' failure to address her concerns. Accordingly the tenant withdrew the application for landlord repairs.

Issues to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice?

If not, are the landlords entitled to an order of possession for unpaid rent?

Background and Evidence

According to the written tenancy agreement in evidence and the landlord's affirmed and undisputed evidence, this tenancy began on May 1, 2017 as a one year fixed term tenancy, after becoming month to month, with rent of \$2,500.00 payable on the first day of each month. Only the male tenant has signed the tenancy agreement. A security deposit of \$1,250.00 and a pet damage deposit of \$500.00 were paid at the beginning of the tenancy and remain in possession of these amounts. Only one of the named tenants has signed the tenancy agreement, although both are recorded as being tenants in the agreement.

The parties agreed that \$1,750.00 remains outstanding for February rent, and that \$2,500.00 is owing for each of March and April.

One of the landlords testified that he served the tenants with the 10 Day Notice on March 5, 2017 by posting it on two of the entrances to the rental unit. A Proof of Service document and photographs in support of this were in evidence. The tenant indicated that she received the 10 Day Notice on March 8.

The tenant also stated that she remains in the rental unit. She further stated that rent has been withheld because of the poor condition of the rental unit and the landlords' failure to address this condition and other matters, including floods, in a timely way or at all. She stated that she does not want the tenancy to continue owing the state of the rental unit.

Analysis

The tenant attending the hearing conceded that rent of \$6,750.00 is currently outstanding. The tenants have not applied for an order allowing them to reduce rent for

emergency repairs or based on the conditions in the rental unit. The tenants have not suggested that there is any reason the landlords' 10 Day Notice should not be upheld.

Although the conditions may have been substandard, the tenant did not have the authority under the Act to deduct any portion of rent under s. 26 of the Act, which provides as follows:

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.

Rent may be withheld only in very limited circumstances. A tenant may withhold a certain amount if, for instance, all of the criteria set out in s. 33 of the Act have been met with respect to emergency repairs. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so.

Based on the above, I uphold the 10 Day Notice. This tenancy ended on March 16, the effective date of the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, and as rent remains outstanding, the landlord is entitled to a two (2) day order of possession. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7(1) and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. The tenant acknowledges arrears of \$6,750.00.

The landlords continue to hold the tenant's security deposit. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlord to retain the tenant's security and pet deposits of \$1,750.00 collectively in partial satisfaction of the monetary claim.

I issue a monetary order against the tenant who has signed the tenancy agreement in favour of the landlords for **\$5,000.00** (the balance of the \$6,750.00 owing).

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenants or anyone on the premises 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 monetary order for the landlord in the following terms, which allows the landlord to obtain a monetary award for unpaid rent and loss of rental income and to retain the security deposit for this tenancy:

Item	Amount
Outstanding rent for February	\$1,750.00
Rent/loss of rental income March and April (\$2,500.00 x 2)	\$5,000.00
Less Security Deposit	-\$1,750.00
Total Monetary Order	\$5,000.00

As only one tenant has signed the tenancy agreement, I issue the order against only that tenant, who must be served with this order as soon as possible. Should the tenant 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*. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 13, 2017

Residential Tenancy Branch