



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR; CNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 19, 2017 ("10 Day Notice"), pursuant to section 46; and
- authorization to recover the filing fee for their application, pursuant to section 72 .

The two tenants, male and female, did not attend this hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the two tenants were served with copies of the landlord's application for dispute resolution hearing package on April 25, 2017, by way of registered mail to the rental unit address where they are still residing. The landlord provided two Canada Post receipts and tracking numbers with his application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on April 30, 2017, five days after their registered mailings.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

The landlord testified that the male tenant was personally served with the landlord's 10 Day Notice on April 19, 2017. The landlord provided a signed and witnessed proof of service with his application. The tenants also applied to dispute this notice in their application. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the landlord's 10 Day Notice on April 19, 2017.

Preliminary Issue - Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the monetary claim to include May 2017 rent of \$2,120.00. The landlord filed an amendment form but claimed that he failed to serve it to the tenants, stating that he only sent a copy to the Residential Tenancy Branch ("RTB"). I received the form at the RTB. The landlord made a verbal request at the hearing to amend his application to include May 2017 rent. The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent, despite the fact that they were not served with the landlord's amendment and they did not attend this hearing.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenants, I order their entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on June 1, 2016 for a fixed term of one year. Monthly rent in the amount of \$2,120.00 is payable on the first day of each month. A security deposit of \$1,030.00 and a pet damage deposit of \$1,030.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was signed by the parties and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent. He confirmed that he issued the 10 Day Notice for unpaid rent of \$2,405.00, due on April 1, 2017. He explained that the \$2,405.00 includes \$285.00 for March 2017 rent and \$2,120.00 for April 2017 rent. The landlord testified that the tenants also failed to pay rent of \$2,120.00 for May 2017. He maintained that the tenants did not make any rent payments towards the above unpaid amounts. He stated that there was no agreement with the tenants to have a payment plan for the above amounts, contrary to what the tenants claimed in their application. He said that he just wanted the tenants to pay rent but they failed to do so.

The landlord seeks a monetary order of \$4,525.00 for unpaid rent from March to May 2017, inclusive.

Analysis

The landlord provided undisputed evidence, as the tenants did not attend this hearing. The tenants failed to pay the full rent due on April 1, 2017, within five days of receiving the 10 Day Notice. The tenants filed an application on April 21, 2017, pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. However, they did not appear at this hearing in order to provide evidence. In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days led to the end of this tenancy on April 29, 2017, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by April 29, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$285.00 for March 2017 and \$2,120.00 for each of April and May 2017. Therefore, I find that the landlord is entitled to \$4,525.00 in unpaid rent from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,030.00 and pet damage deposit of \$1,030.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain these deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$1,030.00 and pet damage deposit of \$1,030.00 in partial satisfaction of the monetary award.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. Should the tenant(s) 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 in the landlord's favour in the amount of \$2,465.00 against the tenants. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

I order the landlords to retain the tenants' entire security deposit of \$1,030.00 and pet damage deposit of \$1,030.00 in partial satisfaction of the monetary award.

The tenants' entire application is dismissed without leave to reapply.

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: May 25, 2017

Residential Tenancy Branch