



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, MT, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence of the landlord. The tenants did not submit any documentary evidence. Neither party raised any issues of service. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 88 and 89 of the *Act*.

Preliminary Issue(s)

Is the tenant entitled to more time to make an application to cancel the 10 Day Notice?

At the outset the tenant, S.W. stated that he had incorrectly state the date in which the tenants received the 10 Day Notice on May 30, 20167 instead of May 16, 2017. A review of the tenants' application shows that the application was filed on May 18, 2017. As such, more time is not required as the tenants have applied within the allowed timeframe.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties agreed that this tenancy began on February 1, 2017 on a fixed term tenancy ending on February 1, 2018 as per the submitted copy of the signed tenancy agreement. The monthly rent is \$2,300.00 payable on the 1st day of each month. A security deposit of \$1,150.00 was paid on February 1, 2017.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$6,900.00 which consists of:

\$2,300.00	Unpaid Rent, May 2017
\$2,300.00	Unpaid Rent, June 2017
\$2,300.00	Unpaid Rent, July 2017

Both parties provided undisputed affirmed testimony that the landlord served the tenants with the 10 Day Notice dated May 16, 2017 in person on May 16, 2017. The 10 Day Notice sets out that the tenants failed to pay rent of \$2,300.00 that was due on May 1, 2017 and an effective end of tenancy date of May 30, 2017.

The landlord provided undisputed affirmed testimony that the tenants have failed to pay any rent since the 10 Day Notice dated May 16, 2017 was served. Both tenants confirmed in their direct testimony that no rent has been paid for May, June and July of 2017. Both parties confirmed in their direct testimony that the tenant, C.R. vacated the rental premises at the end of May 2016 and that the tenant, S.W. still occupies the rental premises.

Analysis

Section 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants did not provide evidence that they were entitled to not pay rent as a result of a prior order from the Residential Tenancy Branch.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for May, June and July of 2017. The tenants admitted that they did not pay any rent since receiving the 10 Day Notice dated May 16, 2017.

As the tenants have failed to pay their rent in full when due, I find that the 10 Day Notice issued May 16, 2017 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on May 30, 2017, the effective date of the 10 Day Notice. As this date has

now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenants admitted that they have not paid the rent for May, June and July while still occupying the rental premises. I find that the landlord is entitled to the amount claimed of \$6,900.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

I authorize the landlord to retain the \$1,150.00 security deposit in partial satisfaction of the claim.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$5,850.00.

These orders must be served upon the tenants. Should the tenants fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those Courts.

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: July 06, 2017

Residential Tenancy Branch