



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and both tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant C.S. provided all of the testimony on behalf of both tenants at this hearing.

The landlord testified that they personally served each tenant with the Landlord's Application for Dispute Resolution, along with all supporting evidence, on June 07, 2017. The tenants confirmed that they received the Application and evidence on this date. In accordance with sections 88 and 89 of the Act, I find that each tenant was duly served with the landlord's Application and supporting evidence on June 07, 2017.

Tenant C.S. stated that the tenants did not file an application in response to the 10 Day Notice and did not provide any evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the landlord entitled to a Monetary Order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave evidence that a tenancy was entered into with the tenants which commenced on June 01, 2012, with a monthly rent of \$750.00 due on the first day of the month. The landlord stated that a security deposit of \$375.00 was paid by the tenants.

The landlord testified that the tenants moved to a different unit within the same complex approximately four years ago. Tenant C.S. confirmed that the tenants moved into the new unit in October of 2012. The monthly rent for the new unit was \$800.00 and an additional \$25.00 was paid by the tenants to the landlord for a security deposit which now totals \$400.00. The landlord continues to retain the security deposit in trust.

The landlord testified that a Notice of Rent Increase form was served to the tenants to increase the monthly rent to \$828.00, effective as of March 01, 2017. Tenant C.S. confirmed this to be true.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 26, 2017, was personally served to Tenant J.F. on that same day. The landlord provided a witness statement from his wife to confirm service. The landlord provided a copy of the 10 Day Notice which indicates rent in the amount of \$2,764.00 that was unpaid after it was due on May 01, 2017, with a stated effective vacancy date of June 04, 2017.

The landlord also provided a copy of a tenant ledger which breaks down the amount of rent owing on the 10 Notice as follows; \$800.00 for February 2015, \$800.00 for May 2015, \$300.00 for August 2015, \$800.00 for April 2016 and \$64.00 for April 2017 and June 2017.

The landlord stated that the ministry paid the monthly rent on behalf of the tenants for June and July of 2017.

The landlord also provided a tenant statement from their former agent which only accounts for the period of June 2015 to August 2015.

Tenant C.S. testified that they agree rent is owed to the landlord although they dispute the total amount claimed and state that only \$200.00 is owed for August 2015 and \$37.00 in total is owed for 2017. Tenant C.S. testified that \$300.00 was paid to the landlord in September of 2015 and \$300.00 was paid in November of 2015 towards the August 2015 rent. Tenant C.S. testified that the Ministry paid the monthly rent for

February 2015, May 2015 and April 2016 directly to the landlord or an agent that the landlord was using for a period of time. Tenant C.S. stated that they have evidence from the Ministry to support this testimony but did not know that they had to submit it to the Residential Tenancy Branch (RTB).

Rule 3.19 of the RTB Rules of Procedure (ROP) states that no additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will specify the date by which the evidence must be submitted to the RTB, whether it must be served to the other party and provide an opportunity for the other party to respond to the evidence if required. In considering whether to admit documentary evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence.

The landlord stated that they had no objection to allowing the tenants to submit late evidence and that if the tenants were able to prove that the monthly rent was in fact paid for the months in question, the landlord would accept that evidence.

I ordered Tenant C.S. to provide their evidence to the RTB and to the landlord by the end of the business day. I informed the tenants that I would decide whether to consider the evidence once it was received. The tenants' evidence was received by the RTB before the end of the business day, on the date of the hearing.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlords, regardless of whether the landlords comply with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*. The tenants did not provide any evidence that they were entitled to deduct any amounts from their rent.

In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on May 26, 2017. The tenants agreed that they failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on June 05, 2017, the corrected effective date on the 10 Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by June 05, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

I find that the evidence provided by the tenants from the Ministry is relevant to the total amount of rent being claimed by the landlord and merits consideration. As the landlord had no objection to the tenants providing evidence after the hearing had commenced and stated that they would accept that evidence if provided, I have decided to consider the tenants' evidence as per Rule 3.19 of the ROP.

I find that the tenants' evidence from the Ministry indicates the monthly rent for February 2015, May 2015 and April 2016 were paid directly to the landlord or the landlord's agent by the Ministry. As the landlord had agreed to the consideration of this evidence and I find no reason to question the authenticity of the tenants' documentary evidence confirming payment of rent was made, the monetary portion of the landlord's application concerning rent owing from February 2015, May 2015 and April 2016 is dismissed.

I further find that \$28.00 of the total amount that the landlord issued the 10 Day Notice for in May of 2017 was not due until June 2017 and had not been incurred at the time that the 10 Day notice was issued to the tenants. For this reason I dismiss the amount owing of \$28.00 for June 2017, with leave to reapply.

In regards to the rent owed from August 2015, I find that \$100.00 of the total \$600.00 paid by the tenants, in September and November of 2015, was applied to the monthly rent of July 2015, of which only \$700.00 was paid. For this reason I find that the tenant owes the landlord the outstanding amount of \$300.00 for the monthly rent of August 2015.

Based on the tenant ledger provided by the landlord and the testimony of the tenant, I find that the tenant owes the landlord the amount of \$37.00 for April 2017.

I find the landlord is entitled to recover \$50.00 of the filing fee from the tenants as the landlord was only partially successful in their claim

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** 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.

Pursuant to section 67 of the *Act*, I grant a monetary order in the favour of the landlord in the amount of \$387.00 against the tenants as follows:

Item	Amount
August 2015 rent	\$300.00
April 2017 rent	37.00
Recovery of Filing Fee for this application	50.00
Total of Above Items	\$387.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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 dismiss the monetary portion of the landlord's application concerning rent owing from February 2015, May 2015 and April 2016.

I dismiss the monetary portion of the landlord's application concerning \$28.00 for June 2017, with 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: July 31, 2017

Residential Tenancy Branch