



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR CNR FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- 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 tenants requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

NZ appeared as agent for the landlords (‘landlords’) and had full authority to do so. Both parties 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.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlords and tenants were duly served with the Applications. The landlords acknowledged receipt of the tenants’ evidence. In accordance with section 88 of the *Act*, I find the landlord duly served with the tenants’ evidence. The landlords did not submit any written evidence for this hearing.

The tenants confirmed that they were served with the 10 Day Notice, with an effective date of June 16, 2017, on June 5, 2017. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on June 5, 2017.

Issue(s) to be Decided

Should the landlords’ 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the landlords entitled to a Monetary Order for Unpaid Rent and Utilities?

Are both parties entitled to recover the cost of the filing fee for this application?

Background and Evidence

The landlords' agent, NZ, testified regarding the following facts. This fixed-term tenancy began in November 2016 with monthly rent in the amount of \$900.00 payable on the first day of each month. The landlords hold a security deposit in the amount of \$450.00 for this tenancy. The tenants continue to reside in the rental unit.

The landlords issued a 10 Day Notice to End Tenancy, dated June 5, 2017 as the tenants failed to pay rent due on June 1, 2017. The landlords testified that the tenants owe \$650.00 in outstanding rent for June 2017, and \$900.00 for July 2017. The total outstanding rent is \$1,550.00. The landlords are seeking an Order of Possession as well as monetary compensation for the unpaid rent, plus recovery of the filing fee.

The tenant, LL, did not dispute that the rent was not paid, but that both him and his partner did not have access to her bank account as she lost her identification. Without access to the bank account, the tenants were unable to pay the rent.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 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.

Based on the testimony of the landlords and the tenants, I find that the tenants were served with the Notice to End Tenancy, and I find that the 10 Day Notice does comply with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

The tenants do not dispute that they have not paid any portion of the outstanding rent, nor do they have the right *under the Act* to deduct or withhold rent. Accordingly I am not allowing the tenants' application to cancel the landlord's 10 Day Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the 10 Day Notice, June 16, 2017.

I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords provided undisputed evidence that the tenants failed to pay the rent in the amount of \$650.00 for June 2017 and \$900.00 for July 2017. Therefore, I find that the landlords are entitled to \$1,550.00 in arrears for the above period.

The landlords continue to hold the tenants' security deposit in the amount of \$450.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery of the \$100.00 filing fee from the tenants.

I dismiss the tenants' application to recover the filing fee.

Conclusion

The tenants' application to cancel the 10 Day Notice and to recover the filing fee **is dismissed**. I find that the landlord's 10 day Notice is valid and effective as of June 16, 2017.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. 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 \$1,200.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent, and also allows the landlords to retain the tenant's security deposit and recover the filing fee for this application.

Item	Amount
Unpaid Rent for June 2017	\$650.00
Unpaid Rent for July 2017	900.00
Recovery of Filing Fee	100.00
Less Security Deposit	-450.00
Total Monetary Order	\$1,200.00

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.

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: August 4, 2017

Residential Tenancy Branch