



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROS. HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenants: CNR FF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 3, 2017 (the “10 Day Notice”), and to recover the cost of the filing fee.

The tenants and an agent for the landlord (the “agent”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any concerns regarding the service of documentary evidence. I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on April 1, 2017. Monthly rent in the amount of \$1,500.00 was due on the first day of each month. The tenants paid a security deposit of \$750.00 at the start of the tenancy which the landlord continues to hold.

The landlord is claiming \$1,500.00 for unpaid August 2017 rent. The tenants confirmed having been served with the 10 Day Notice on August 3, 2017 and filed to dispute the 10 Day Notice on August 4, 2017.

The 10 Day Notice indicates that \$1,500.00 in rent was owed as of August 1, 2017. The agent confirms that the tenants have failed to pay the landlord \$1,500.00 since being served with the 10 Day Notice although the tenants did serve papers on the landlord regarding their application to dispute the 10 Day Notice.

Tenant J.T. testified that he has vacated the rental unit which the agent stated was not known to her. Tenants J.G. and N.G. confirmed that they continue to occupy the rental unit. The tenants claim that the landlord failed to pick up the rent and also confirmed that no attempts were made to bring the rent owed to the service address of the landlord as tenant J.G. "could not make it there".

Analysis

Based on the testimony of the parties and the documentary evidence before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did what was reasonable to minimize the damage or loss.

I find the tenants have provided insufficient evidence to support that rent for August 2017 has been paid. The onus of proof is on the tenants to prove that they did pay rent when they applied to dispute a 10 Day Notice. Instead, tenant J.G. stated that she “could not make it” to the service address of the landlord and that the landlord should have picked up the rent. At no time is it the responsibility for the landlord to have to pick up rent or locate the tenants to find rent owed. Rather, it is the tenants’ responsibility to ensure the landlord is paid the monthly rent on the date that it is due.

As a result, I **dismiss** the tenants’ application to cancel the 10 Day Notice. I find that the 10 Day Notice is valid and I uphold the 10 Day Notice.

Order of Possession – The effective vacancy date of the 10 Day Notice was August 13, 2017 which has already passed. Therefore, pursuant to section 55 of the *Act*, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I find the tenancy ended on August 13, 2017 and that the tenants have been over-holding the rental unit since that date.

Claim for unpaid rent – I find that rent of \$1,500.00 remains owing by the tenants for August 2017 rent owed. Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,500.00** comprised of unpaid rent for August 2017.

As the landlord has succeeded with their application, I grant the landlord the recovery of their **\$100.00** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$1,600.00**, comprised of \$1,500.00 in unpaid rent, plus the \$100.00 filing fee.

During the hearing, the agent asked permission to retain the tenants’ security deposit towards unpaid rent if the landlord was so entitled to under the *Act*.

I authorize the landlord to retain the tenants' full security deposit of \$750.00 in partial satisfaction of the landlord's monetary claim pursuant to sections 38 and 67 of the *Act*. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$850.00**.

Conclusion

The tenants' application is dismissed.

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$1,600.00 as indicated above. The landlord has been authorized to retain the tenants' full security deposit of \$750.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$850.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 31, 2017

Residential Tenancy Branch