



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

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 their 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;
- an order to suspend or set conditions on the landlords' right to enter the rental unit pursuant to section 70.

The landlord, R.S. (the landlords) attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend. The landlords provided undisputed affirmed evidence that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 28, 2017 to both tenants. The landlords have provided a copy of the Canada Post Customer Receipt Tracking numbers and report that the two packages were "unclaimed" by the tenants after notice cards were left by Canada Post to pick them up.

I accept the undisputed evidence of the landlords and find that both tenants have been properly served as per sections 88 and 89 of the Act.

The landlords also provided undisputed affirmed evidence that they are not aware of or have been served with the tenants' notice of hearing package. As tenants have failed to attend and the landlords have not been served with the tenants' notice of hearing package, the tenants' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent and utilities?

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

Are the landlords entitled to retain all or part of the security deposit?

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.

This tenancy began on December 1, 2016 on a fixed term tenancy ending on November 30, 2017 as per the submitted copy of the signed tenancy agreement dated November 28, 2016. The monthly rent is \$1,300.00 payable on the 1st day of each month. A security deposit of \$650.00 was paid on November 28, 2016.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$2,131.75 which consists of:

\$51.60 Utilities, Electricity March 2017

\$51.30 Utilities, Electricity May 2017

\$35.00 Utilities, Gas May 2017

\$41.00 Utilities, Gas April 2017

\$22.00 Utilities, Gas June 2017

\$600.00 Unpaid Rent, May 2017

\$1,300.00 Unpaid Rent, June 2017

A review of the listed items and the copy of the Monetary Worksheet show that this totals \$2,100.90 which is different from the applied claim of \$2,131.75. The landlords clarified that the initial application was over-estimated and that he relies on the amount claimed on the submitted monetary worksheet.

The landlords provided undisputed evidence that the tenants were served with the 10 Day Notice dated June 9, 2017 on June 9, 2017 by posting it to the rental unit door. The 10 Day Notice sets out that the tenants failed to pay rent of \$1,900.00 that was due on June 1, 2017 and unpaid utilities of \$266.75 following a written demand made on May 30, 2017. The landlords clarified that the written demand was made in an email dated May 23, 2017.

In support of these claims the landlords have provided:

- A copy Tenancy Agreement signed and dated on November 28, 2016.
- A copy of "Additional Terms" signed and dated November 28, 2016.
- A copy of the 10 Day Notice dated June 9, 2017.
- A copy of digital evidence, re: video of service of 10 Day Notice.
- A copy of digital evidence, re" video of witness on service of 10 Day Notice.
- A copy of Proof of Service document dated June 9, 2017, re: service 10 Day Notice
- Copies of 5 Utility Invoices.
- A copy of email, re: written demand of unpaid rent and utilities to tenant.

Analysis

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.

I accept the undisputed evidence of the landlords and find that the tenants were properly served with the 10 Day Notice dated June 9, 2017 by posting to the rental unit door.

I accept the undisputed evidence of the landlords and find that the tenants having received the 10 Day Notice on June 9, 2017 failed to pay all of the rent owed or file an application for dispute of the 10 Day Notice.

The tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by June 21, 2017. The tenants are deemed served with the 10 Day Notice 3 days (by posting to the rental unit door) later after June 9, 2017 and the effective end of tenancy date is corrected to June 21, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided uncontested testimony that the tenants have unpaid rental/utilities arrears totaling \$2,100.90. I find that the landlords have proven their entitlement to the rent and utility arrears. The landlords are entitled to a monetary order for the unpaid rent and utilities.

The landlords applied to keep the tenants' \$650.00 security deposit. I allow the landlords to retain the security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The tenants' application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The landlords are granted an order of possession for unpaid rent and utilities.
The landlords are granted a monetary order for unpaid rent and utilities of \$1,550.90.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia 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: August 15, 2017

Residential Tenancy Branch