



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction:

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with cross-applications based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 8, 2017 (the “10 Day Notice”).

The landlords applied for an order of possession, a monetary order for unpaid rent, authorization to retain the security deposit, and recovery of the application filing fee.

The tenants applied for an order cancelling the 10 Day Notice, compensation for damage or loss, an order the landlord comply, and recovery of the filing fee.

Counsel attended on behalf of the corporate landlords, as did an agent of the landlord, SP. The two tenants attended and their son spoke on their behalf. Both parties were given a full opportunity to be heard, to present documentary evidence and to make submissions.

Service of the parties’ application, notice of hearing, and evidence was not at issue.

At the outset of the hearing I advised the parties that I would be severing the tenants’ application for compensation and for an order requiring the landlord to comply, from their application to cancel the 10 Day Notice. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. Here, the tenants seek several different orders, the most urgent of which is an order setting aside the 10 Day Notice. The other orders sought are not so related to the question of whether or not the tenancy will continue to require determination during these proceedings. Accordingly, I dismiss the balance of the tenants’ application, with leave to re-apply.

Over the course of the hearing the landlords’ application was amended to include a claim for unpaid rent for August and September as well as for July. The Residential Tenancy Branch Rules of Procedure authorize me to allow amendments with respect to matters that can

reasonably anticipated, including the landlords' claim for additional rent in these circumstances. Accordingly, I amend the landlords' claim.

Issues to be Decided

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

If not, are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary award for unpaid rent?

Is either party entitled to recover the application filing fee?

Background and Evidence

According to the written tenancy agreement in evidence and the agreed upon facts, this tenancy began December 1, 2016 and is a fixed term tenancy expiring November 30, 2017. Rent of \$1530.00 is \$1,700.00 payable on the first day of each month. A security deposit of \$765.00 was paid at the beginning of the tenancy and remains with the landlords. The tenancy agreement provides that services charges for "nsf" cheques and late fee charges apply.

The landlords' agent testified that the tenants have not paid rent for July, August, or September, and that late fees and service charges, each in the amount of \$25.00, are owing for of these months as well, for a total of \$4,740.00.

The tenants received the 10 Day Notice on July 8, 2017. Based on the receipt for the application fee in evidence, the tenants applied to dispute the 10 Day Notice on July 14, 2017.

The tenants' son stated that the tenants have stopped paying rent because of allegedly illegal construction. There is no prior arbitrator's order authorizing the tenants to withhold rent.

The tenants' son said that his parents are in their late 80s and should not be required to vacate the rental unit immediately. The tenant's mother spoke to me briefly, and confirmed that she understood the submissions that were being made on her behalf and the likely results of today's hearing, and that she did not wish to attempt to settle with the landlord.

Analysis

The tenants were served with the 10 Day Notice on July 8, 2017 but did not file an application to dispute the 10 Day Notice until July 14, 2017. The tenants have not paid the amount outstanding.

Section 46(5) of the Act provides that if a tenant does not pay the amount outstanding or apply to dispute a 10 Day Notice within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

In accordance with section 46(5) of the Act, the failure of the tenants to dispute the notice within five days led to the end of this tenancy on July 22, 2017, the effective date on the 10 Day Notice. The named tenants and anyone on the premises were required to vacate the premises by that date.

Although the tenants have applied to dispute the 10 Day Notice only one day late, they have also failed to pay the amount owing in full after receipt of the 10 Day Notice. Accordingly, the 10 Day Notice would have been upheld on this basis even if the tenants had filed the application to dispute in time.

As the unit remains occupied and as rent remains outstanding, I find that the landlords are entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act establish that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I accept that the tenants owe the landlord \$4,740.00, and make an order in the landlords' favour for this amount.

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

The landlords continue to hold the security deposit of \$765.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I authorize and order the landlords to retain the security deposit in partial satisfaction of the monetary claim.

Conclusion

The landlord's 10 Day Notice is upheld. I grant an order of possession to the landlords effective **two (2) days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order for the landlords in the following terms, which allows the landlords to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid rent	\$4,740.00
Filing fee	\$100.00
Less security deposit	-\$765.00
Total Monetary Order	\$4,075.00

The tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The balance of the tenants' application is dismissed with leave to reapply.

Dated: September 29, 2017

Residential Tenancy Branch