



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR OPC FF MNSD MNR MND

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for:

- an Order of Possession for cause, pursuant to section 55;
- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for damage to the unit, site, or property, money owed or compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlords attended the hearing by way of conference call, the tenants did not. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlords testified that the tenants were served with the landlords' application for dispute resolution hearing package and evidence on July 7, 2017 by way of registered mail. The landlords provided Canada Post tracking numbers during the hearing. In accordance with sections 88, 89 and 90 of the Act, I find that the tenants were deemed served with the landlord's application and evidence on July 12, 2017, five days after its registered mailing.

The landlords testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ('10 Day Notice') on June 5, 2017 by personally serving the 10 Day Notice on the tenants. In accordance with section 88 of the Act, I find that the tenants were deemed served with the landlord's 10 Day Notice. The landlords testified that the tenants were served with 1 Month Notice to End Tenancy for Cause ('1 Month Notice') on June 15, 2017, by way of posting the 1 Month Notice on the tenant's door. In accordance with sections 88 and 90 of the Act, I find that the tenants were deemed served with the 1 Month Notice on June 18, 2017, three days after posting.

Although the landlords applied for a monetary Order of \$2,400.00 in their initial claim, since they applied another \$2,400.00 in rent has become owing that was not included in their application. The landlords applied to amend their claim to reflect the two additional months of unpaid rent. I

have accepted the landlords' request to amend their original application from \$2,400.00 to \$4,800.00 to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to an Order of Possession for cause?

Are the landlords entitled to monetary compensation for unpaid rent or for money owed?

Are the landlords entitled to retain the tenants' security deposit in partial satisfaction of their claim?"

Are the landlords entitled to recover their filing fee for this application?

Background and Evidence

The landlords testified regarding the following facts. This three month, fixed-term tenancy began on May 15, 2017 with monthly rent in the amount of \$1,200.00 payable on the first day of each month. The landlords collected a security deposit in the amount of \$600.00 for this tenancy, and still hold that deposit. This tenancy was to end on August 15, 2017, but the tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice to the tenants on June 5, 2017, indicating an effective move-out date of June 15, 2017 as the tenants failed to pay the rent for May 2017. The landlords testified that the tenants have not paid any rent since the 10 Day Notice was issued, and now owes \$1,200.00 rent for May 2017 through to August 2017. The total outstanding rent is \$4,800.00. The landlords are seeking an Order of Possession as well as monetary compensation for the unpaid rent.

On June 15, 2017 the landlords issued the tenants a 1 Month Notice for Cause as the landlords were notified by the municipality that the suite was not considered legal, and all tenants must vacate the property by July 17, 2017.

The landlords included copies of the 10 Day and 1 Month Notices in their evidence, as well a copy of the tenancy agreement.

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.*

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy 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 failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on June 15, 2017, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by June 15, 2017. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

The landlords provided undisputed evidence that the tenants failed to pay the outstanding rent in the amount of \$4,800.00. Therefore, I find that the landlords are entitled to \$4,800.00 in outstanding rent for this tenancy.

The landlords continue to hold the tenants' security deposit of \$600.00. 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.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

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 \$4,300.00 Monetary Order in favour of the landlords under the following terms, which allows the landlords to recover unpaid rent, plus the filing fee, and also allows the landlords to retain the tenants' security deposit:

Item	Amount
Unpaid Rent for May 2017	\$1,200.00
Unpaid Rent for June 2017	1,200.00
Unpaid Rent for July 2017	1,200.00
Unpaid Rent for August 2017	1,200.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$4,300.00

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: September 18, 2017

Residential Tenancy Branch