



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACD REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- 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 two tenants, male and female, did not attend this hearing, which lasted approximately 14 minutes. The landlords' two agents, landlord SA ("landlord") and "landlord WM" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord WM confirmed that he was the property manager for the landlord company AR, named in this application. The landlord confirmed that she was employed by the landlord company VES, named in this application. Landlord WM and the landlord confirmed that they had the authority to speak on behalf of their respective companies and the landlord owner named in this application, as agents at this hearing (collectively "landlords").

The landlord testified that the tenants were each served separately with the landlords' application for dispute resolution hearing package, original notice of hearing and amendment on August 4, 2017, by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers for the mailing on August 4, 2017. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' application, amendment and original notice of hearing on August 9, 2017, five days after its registered mailing.

The landlord claimed that the hearing date and time was then changed by the Residential Tenancy Branch ("RTB") due to an administrative error by the RTB. The landlord confirmed that after receiving a new notice of hearing with the new date and time from the RTB, it was then sent out to both tenants on August 18, 2017, by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during the hearing for the mailing on August 18,

2017. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the new notice of hearing on August 23, 2017, five days after its registered mailing.

The landlord confirmed that the tenants were served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 6, 2017 ("10 Day Notice"), on the same date, by way of posting to their rental unit door. The effective move-out date on the notice is July 16, 2017. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' 10 Day Notice on July 9, 2017, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase their monetary claim to include August, September and October 2017 rent of \$1,895.00 for each month. The landlords filed an amendment on August 4, 2017, to add the above amounts and served it to the tenants on the same date by way of registered mail, as noted above. Since the landlords filed their application in July 2017, rent from August to October 2017 rent was not yet due. The tenants are aware that rent is due on the first day of each month. One of two tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier for failure to pay the full rent due. Therefore, both tenants knew or should have known that by failing to pay their rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlords' claims for increased rent, despite the fact that they did not attend this hearing, as they were deemed to have received the landlords' amendment including these claims.

Issues to be Decided

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

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

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

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlord and landlord WM, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on July 6, 2015. Monthly rent in the amount of \$1,895.00 is payable on the first day of each month. A security deposit of \$947.50 was paid by the tenants and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The male tenant moved out of the rental unit in September 2017 but the female tenant did not.

The landlords seek an order of possession against both tenants because even though the male tenant vacated the rental unit, the landlord said that he did not return the rental unit keys to the landlords.

The landlords issued the 10 Day Notice for unpaid rent of \$5,685.00 due on July 1, 2017. The landlord confirmed that the above amount was for unpaid rent of \$1,895.00 for three months, from May to July 2017, inclusive.

The landlords seek an order of possession, a monetary order of \$11,370.00 for unpaid rent from May 1, 2017 to October 31, 2017, and recovery of the \$100.00 filing fee. The landlord confirmed that the male tenant provided the landlords with a cheque for \$1,500.00 on September 5, 2017, but this cheque was returned for "non-sufficient funds," so the tenants did not make any payments towards the \$11,370.00 owed in rent.

Analysis

The landlords provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on July 1, 2017, within five days of being deemed to have received the 10 Day Notice. The tenants have not made 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 July 19, 2017, the corrected effective date on the 10 Day Notice.

In this case, this required the tenants and anyone on the premises to vacate the premises by July 19, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenants to pay monthly rent to the landlords on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlords provided undisputed evidence that the tenants failed to pay rent totalling \$11,370.00 from May 1, 2017 to October 31, 2017. Accordingly, I find that the landlords are entitled to rental arrears of \$11,370.00 from the tenants.

The landlords continue to hold the tenants' security deposit of \$947.50. Over the period of this tenancy, no interest is payable on the security deposit. Although the landlords did not apply to retain the security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I

order the landlords to retain the tenants' entire security deposit of \$947.50 in partial satisfaction of the monetary award.

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

Conclusion

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant(s). Should the tenant(s) 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 order the landlords to retain the tenants' entire security deposit of \$947.50 in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$10,522.50 against the tenant(s). 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: October 30, 2017

Residential Tenancy Branch