



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR OPL MNR MNSD FF
For the tenants: CNR CNL 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 landlords applied for an order of possession for unpaid rent or utilities, and based on landlords’ use of property, for a monetary order unpaid rent or utilities, for authorization to keep all or part of the security deposit 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 July 20, 2017 (the “10 Day Notice”), to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated June 8, 2017 (the “2 Month Notice”) and to recover the cost of the filing fee.

The landlord M.D. (the “landlord”) attended the teleconference hearing which began promptly on Wednesday, October 4, 2017 at 9:30 a.m. Pacific Time. The tenants did not attend the hearing. As the tenants did not attend the hearing to present the merits of their application, the tenants’ application was **dismissed, without leave to reapply**, after the 10 minute waiting period had elapsed. The hearing continued with consideration of the landlords’ application and after a total of 36 minutes, the hearing was concluded.

The hearing process was explained to the landlord, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), the Application for Dispute Resolution (the “Application”) and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, Application and documentary evidence were served on the tenants by registered mail on July 26, 2017 by way of a separate registered mail package for each of the two tenants and addressed to each tenant separately. The landlord provided two registered mail tracking numbers in evidence both of which have been included on the cover page of this

decision for ease of reference. The landlord confirmed that the names and addresses on both of the registered mail packages matched the names of the tenants and the rental unit address and that both tenants continue to occupy the rental unit as they have not returned the rental unit keys.

Documents sent by registered mail are deemed served five days after mailing pursuant to section 90 of the *Act*. The landlord testified that the registered mail packages were both signed for on August 2, 2017 which is supported by the online registered mail tracking website information. As a result, I find that both tenants were served as of August 2, 2017 which is the date both registered mail packages were signed for and accepted.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed for July 2017, they are seeking loss of August rent as the landlords allege the tenants breached *Act* by failing to pay July rent and that the tenancy ended based on the 10 Day Notice and not the 2 Month Notice, and that they are also entitled to October 1-4, 2017 rent as the tenants have yet to fully vacate and return the rental unit keys and return possession of the rental unit to the landlords. I have amended the landlords' application accordingly pursuant to section 64(3) of the *Act* as I find that by the tenants not attending the hearing and having their application dismissed without leave to reapply, that I must address the above in this decision as I find that both notices to end tenancy are now undisputed as a result of the tenants' failure to attend this hearing to present the merits of their Application. In addition, I find that simply submitting an application is not sufficient to dispute a notice to end tenancy as there is also an expectation that you attend the hearing to present the merits of your application.

Issues to be Decided

- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlord testified that the landlords inherited this tenancy without a formal written tenancy agreement being provided to them by the previous owner of the home. As the tenancy survived the sale of the home, the landlord testified that the monthly rent was \$1,915.00 per month and due on the first day of each month. The landlord affirmed that the tenants claimed they had previously paid a security deposit of \$1,000.00 and that in the interests of fairness to the tenants, they will agree that the amount of the security deposit was \$1,000.00 which they have applied to offset from their monetary claim.

The landlord's monetary claim as described is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Loss of August 2017 rent	\$1,915.00
2. Loss of September 2017 rent	\$1,915.00
3. Loss of October 1-4 2017 rent inclusive (\$61.77 per diem rental rate X 4 days)	\$247.08
4. Recovery of cost of the filing fee	\$100.00
TOTAL	\$4,177.08

The landlords have also requested authorization to offset the amount owed by the tenants by the \$1,000.00 security deposit and seek authorization to retain that full amount in their application.

Regarding item 1, although the landlords had issued a 2 Month Notice dated June 8, 2017, with an effective vacancy date of August 31, 2017, the tenants failed to pay rent on July 1, 2017 and as a result, were issued a 10 Day Notice on July 20, 2017. The landlord testified that the tenants did not pay the \$1,915.00 rent owing for July 2017 until well after the 5 day timeline under section 46 of the *Act* which was eventually paid later on August 1st or 2nd of 2017. The landlord stated that the tenants were served with the 10 Day Notice on July 20, 2017 at the rental unit address

While the tenants disputed the 10 Day Notice originally, they failed to attend the hearing which I find has the same result as not disputing the 10 Day Notice. The effective date listed on the 10 Day Notice was July 31, 2017 which has already passed.

Analysis

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

Order of possession – Section 55 of the *Act* requires that I must grant an order of possession once I have dismissed the tenants' application to dispute a notice to end tenancy, and the notice to end tenancy complies with section 52 of the *Act*. As the tenants failed to attend the hearing, and the tenants' application to cancel the 10 Day Notice and 2 Month Notice have been dismissed, and taking into account that the 10 Day Notice does comply with section 52 of the *Act* and the effective vacancy date of July 31, 2017 has already passed, **I grant** the landlords an order of possession pursuant to section 55 of the *Act* **effective two (2) days** after service on the tenants. I find the tenancy ended on July 31, 2017 as the tenants failed to attend the hearing, I consider the 10 Day Notice to be undisputed and as a result, the tenancy ended on the effective date of the 10 Day Notice pursuant to section 46 of the *Act* as of July 31, 2017. As a result, the tenants have been overholding the rental unit since July 31, 2017.

Given the above, I find that the 2 Month Notice is of no force or effect as the tenancy ended on July 31, 2017 by way of the undisputed 10 Day Notice and the tenants failure to pay rent within 5 days of receiving the 10 Day Notice served on July 20, 2017. Therefore, I find that the landlords do not owe any compensation to the tenants related to the 2 Month Notice as the tenancy ended by way of the 10 Day Notice and not the 2 Month Notice.

Monetary claim – I accept the landlord's undisputed testimony that the landlord has suffered a loss of August 2017 rent of \$1,915.00 and September 2017 rent of \$1,915.00 and \$247.08 for October 1-4, 2017 for the four days of lost rent as of the date of this hearing as the tenants continue to occupy the rental unit by not having removed all of their personal items, cleaned and returned the rental unit keys. Based on the above, I find the landlords have proven their undisputed monetary claim of **\$4,177.08** which also includes the recovery of the cost of the filing fee of \$100.00 which I grant as the landlords' application has merit.

I also grant the landlords liberty to apply for any other loss of the remainder of October 2017 from October 5, 2017 forward should the tenants continue to overhold the rental unit.

The landlords continue to hold the tenants' security deposit of \$1,000.00 which has not accrued interest since the start of the tenancy based on the undisputed information before me. I authorize the landlords to retain the tenants' full security deposit of \$1,000.00 in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of **\$3,177.08**.

Conclusion

The tenants' application is dismissed in full, without leave to reapply.

The landlords' application is successful.

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

The landlords have established a total monetary claim of \$4,177.08 and have been authorized to retain the tenants' full security deposit of \$1,000.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlords in the amount of \$3,177.08. 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.

The landlords are granted liberty to apply for any other loss of the remainder of October 2017 from October 5, 2017 forward should the tenants continue to overhold the rental unit.

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: October 4, 2017

Residential Tenancy Branch