



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kahl Realty and Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR MNR MNSD FF
Tenants: CNR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 9, 2017.

The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- cancel the 10 Day Notice to End Tenancy for Unpaid rent or utilities (the 10 Day Notice);

The Landlord's Agent (the Landlord) cross-applied for the following relief:

- an Order of Possession pursuant to section 55; and,
- a monetary order for unpaid rent pursuant to section 67.

Preliminary and Procedural Issues

The Tenants did not attend the hearing. Since the Tenants did not appear at the hearing, I dismiss their application in its entirety without leave to reapply.

The Landlord attended the hearing and provided affirmed testimony. The Landlord stated that she put both of the Tenants' Notice of Hearing packages into one envelope and sent this along with her supporting evidence to the Tenants rental unit on September 21, 2017, by registered mail. The Landlord also stated that she personally gave one of the Tenants, C.C, the Notice of Hearing package and her evidence on this day.

First, I find it important to note the following rules of procedure (3.1):

3.1 Documents that must be served with the Notice of Dispute Resolution Proceeding Package:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, **serve each respondent with copies...** [of the documents].

[my emphasis added]

I find it is unclear who the registered mail package (including the application and evidence) was sent to, and whether it listed one tenant, or both. In any event, I find the Landlord's service of her application package and evidence, by registered mail, is not sufficient to ensure either tenant has been served in accordance with section 89 of the *Act* and the rules of procedure. More specifically, the Landlord should have sent each tenant (respondent) a separate mailing, each with a copy of the application package and evidence.

Next, I turn to the other method of service the Landlord pursued for the purposes of this application (personal service). Pursuant to section 89 of the *Act*, I find one of the tenants, C.C., has been sufficiently served with the application package via personal service from the Landlord. Keeping in mind that only one tenant needs to be served with the application package in the event the Landlord is seeking an order of possession for the rental unit, I find the Landlord has fulfilled their obligations for service in order for the order of possession issue to be addressed.

Further, since only one Tenant, C.C., has been sufficiently served with the application package and evidence, any monetary order arising out of this hearing will only be issued to this individual.

The Landlord has requested to amend her application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the Landlord requested to amend her application to allow her to retain the security deposit to offset rent owed and to recover the cost of the filing fee. In consideration of these requests, I hereby amend the Landlord's application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to have the landlord's 10 Day Notice to End Tenancy cancelled?
 - If not, is the landlord entitled to an Order of Possession
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
- Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that rent, in the amount of \$1,300.00, is due on the first day of each month. The Landlord testified that she holds a security deposit of \$650.00.

The Landlord testified that she personally served the Tenant, C.C., with the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on September 9, 2017. Service of this document was witnessed by a third party. The amount owing at that time was \$1,300.00. The Landlord testified that this amount was for the month of September 2017. The Landlord testified that the Tenants have not paid any rent since August 2017. The Landlord stated that the Tenants now owe rent for September, October, and November of 2017, totalling \$3,900.00.

Analysis

The first issue I will address is whether the tenants are entitled to have the landlord's 10 Day Notice cancelled. Although the Tenants filed an application to dispute the 10 Day Notice on September 13, 2017, their application is dismissed because neither of them attended this hearing.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the landlord an order of possession. Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy (unpaid rent), and be in the approved form.

I find that the 10 Day Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay \$3,900.00 in past due rent.

The Landlord requested that they be able to retain the security deposit of \$650.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$3,900.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$650.00)
TOTAL:	\$3,350.00

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,350.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 10, 2017

Residential Tenancy Branch