



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROCKWELL MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPR MNR FF
For the tenants: CNR OLC ERP RP PSF

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (the “applications”) under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, 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 September 13, 2017 (the “10 Day Notice”), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for emergency repairs for health or safety reasons, for regular repairs to the rental unit, site or property and to provide services or facilities required by the tenancy agreement or law.

The tenants and three agents for the landlord (the “agents”) attended the teleconference hearing. The hearing process was explained to the parties, and the parties were given an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

While the tenants claim they did not receive the landlord’s application, the registered mail tracking numbers submitted in evidence confirmed that both packages were signed for and accepted on October 30, 2017 and October 31, 2017 respectively. Both registered file numbers have been included on the cover page of this decision for ease of reference. In addition, the landlord submitted in evidence a copy of the registered mail receipts which confirmed that the names and address matched the names of both tenants and the rental unit address and that as of the time of the hearing, the tenants continued to occupy the rental unit. Based on the above, I am satisfied that the tenants were sufficiently served in accordance with the Act.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator and confirmed that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Should the 10 Day Notice be cancelled or upheld?
- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- If the tenancy is continuing, does the remainder of the tenants' application have merit?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on June 1, 2017 and monthly rent in the amount of \$1,050.00 is due on the first day of each month and that the tenants agreed to \$35.00 per month for a parking space also which is included on the tenancy agreement. The parties confirmed that the tenants paid a \$525.00 security deposit at the start of the tenancy which the landlord continues to hold. The security deposit has accrued no interest to date.

During the hearing, the tenants agreed that rent had not been paid for September 2017 as the tenants decided to not pay rent until the landlord fixed the issues with their rental unit after mailing the landlord in July 2017.

Regarding the 10 Day Notice, the tenants confirmed being served with the 10 Day Notice dated September 13, 2017 and disputed the 10 Day Notice on September 18, 2017 which is within the 5 day timeline provided for under section 46 of the *Act*. The effective vacancy date listed on the 10 Day Notice was September 26, 2017. The tenants continue to occupy the rental unit.

An agent testified that receipts were issued to the tenants for use and occupancy for the months of October and November 2017.

Analysis

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

10 Day Notice – Firstly, I find the tenants have provided insufficient evidence of any authority under the *Act* to withhold September 2017 rent plus parking which totals \$1,085.00. Therefore, I **dismiss** the tenants' Application **without leave to reapply** in full due to insufficient evidence. Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, I grant the landlord an order of possession effective **November 30, 2017 at 1:00 p.m.** as the landlord has issued the tenants a receipt for use and occupancy for November 2017. I find the tenancy ended on September 26, 2017 which was the effective vacancy date listed on the 10 Day Notice. I dismiss the remainder of the tenant's application as I find it to be moot now given that the tenancy ended on September 26, 2017.

Claim for unpaid rent - Pursuant to section 26 of the *Act*, tenants must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenants have failed to comply with a standard term of the oral tenancy agreement which the parties agreed required that rent is due monthly on the first of each month. The tenants continue to occupy the rental unit. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof and I find the landlord has established a monetary claim of **\$1,085.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – I find the landlord has established a total monetary claim of **\$1,185.00** comprised of \$1,085.00 owing for unpaid rent and parking for September 2017, plus the recovery of the cost of the \$100.00 filing fee. During the hearing the agents requested to offset the security deposit if they are entitled to do so.

Pursuant to section 72 of the *Act*, **I authorize** the landlord to retain the tenants' full security deposit of \$525.00 which includes \$0.00 interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$660.00**.

Conclusion

The tenants' application is dismissed in full.

The landlord's application is successful. The landlord has been granted an order of possession effective November 30, 2017 at 1:00 p.m. The tenants must be served with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$1,185.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$525.00 which includes \$0.00 in interest in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$660.00. 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.

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: November 3, 2017

Residential Tenancy Branch