



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MND, MNSD, OLC, ERP
OPR, MNR, OPL, MND, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and utilities, an Order of Possession, compensation for damage to the unit, site, or property, and compensation for monetary loss, or other money owed.

This hearing also dealt with a cross-application filed by the Tenants under the *Act*, seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), an order for the Landlord to make emergency repairs and to comply with the *Act*, *Regulation*, or tenancy agreement, compensation for the cost of emergency repairs already completed, return of all or part of the security deposit or pet damage deposit, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, two agents for the Landlord (the “Agents”), and the Tenants, all of whom attended at the scheduled time, ready to proceed. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

Both parties filed Applications seeking multiple remedies under multiple sections of the Act, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenants applied to cancel a 10 Day Notice and for compensation for emergency repairs already completed, and the Landlord applied for an Order of Possession in relation two separate Notices to End Tenancy, and a Monetary Order for unpaid rent, I find that the priority claims relate to whether the tenancy will continue and the payment of rent. I find that the other claims by both parties are either not sufficiently related to rent or the continuation of the tenancy, or are premature, and as a result, I exercise my discretion to dismiss the Tenants' claims for an order for the Landlord to make emergency repairs, an order for the Landlord to comply with the *Act, Regulation*, or tenancy agreement, and for the return of all or part of the security deposit or pet damage deposit. I also exercise my discretion to dismiss the Landlord's claims for compensation for damage to the unit, site, or property, and compensation for monetary loss, or other money owed, for the same reasons noted above. I grant both parties leave to re-apply for these other claims.

At the outset of the hearing the Tenants confirmed receipt of the Landlord's documentary evidence, however, the testimony of the Tenants was contradictory with regards to whether or not they had served their evidence on the Landlord. At first the Tenants testified that they did not serve their evidence on the Landlord. When I advised them that their evidence would not be considered in the hearing as a result, they changed their testimony and stated that they had served their evidence on the Landlord. The Landlord and the Agents testified that the only documents received from the Tenants were the Application, the Notice of Hearing, two pictures, and two pages of text messages. Due to the contradictory nature of the testimony provided by the Tenants, I do not find their testimony in relation to the service of their evidence credible or reliable and I therefore prefer the testimony of the Landlord and Agents. As a result, the only documentary evidence from the Tenants that I have accepted for consideration in the hearing are those listed by the Landlord and Agents as having been received.

Issue(s) to be Decided

Is there a valid reason to cancel the 10 Day Notice under the Act?

If the Tenant is unsuccessful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to Section 55(1) of the Act?

Is the Landlord entitled to a Monetary Order for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the six month fixed-term tenancy began January 1, 2016, at a monthly rent amount of \$2,800.00 which was due on the first day of each month. The tenancy agreement also contains a move out clause initialed by both the Landlord and the Tenants, indicating that the fixed-term tenancy ends on July 1, 2016, at which point the Tenants are required to move-out. In the hearing all parties agreed that at the end of the fixed-term tenancy, the Tenants were not required to vacate the rental unit and instead the tenancy continued on a month-to-month basis under the same terms. All parties also confirmed that a security deposit in the amount of \$1,400.00 was paid by the Tenants, which the Landlord still holds.

The Agent for the Landlord testified that when the Tenants did not pay their rent as required on September 1, 2017, a 10 Day Notice was served on them. The 10 Day Notice in the documentary evidence before me, dated September 6, 2017, has an effective vacancy date of September 16, 2017, and indicates that on September 1, 2017, the Tenants owed \$2,800.00 in rent. The 10 Day Notice also indicates that it was served on the Tenants in person on September 6, 2017, and in the hearing the Tenants confirmed that they received the 10 Day Notice in the manner described above.

The Agent testified that since the service of the 10 Day Notice, no rent has been paid by the Tenants and that as of the date of the hearing the Tenants owe \$5,600.00 in outstanding rent for September and October, 2017. A Monetary Order worksheet for these amounts was also submitted by the Landlord for my consideration. Although the Tenants applied for compensation for the cost of emergency repairs already completed, no documentary evidence was before me for consideration with regards to emergency repairs and no testimony was provided by the Tenants regarding either emergency repairs or deductions from rent in relation to emergency repairs. Although the Tenants provided some testimony regarding their intention to eventually pay the outstanding rent, they ultimately confirmed that as of the date of the hearing, they owed the rent amounts claimed by the Landlord for both September and October, 2017.

Testimony was also accepted from both parties in relation to a Two Month Notice. The Two Month Notice in the documentary evidence before me, dated May 1, 2017, has an effective vacancy date of June 30, 2017.

All parties agreed that the Tenants did not file an Application to dispute the Two Month Notice and that they were given compensation in accordance with section 51 of the *Act*. There was disagreement between the parties with regards to whether the tenancy was re-established after the issuance of the Two Month Notice, and whether or not the Tenants were entitled to the compensation pursuant to section 51 of the *Act*, given that they did not vacate the rental unit as required or dispute the Two Month Notice.

Analysis

Section 26 of the *Act* states that 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. Although the Tenants provided testimony regarding their intention to pay the rent, insufficient evidence was submitted to demonstrate that they had a right under this *Act* to deduct all or a portion of the rent.

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenants were served with the 10 Day Notice on September 6, 2017, the day they acknowledge receiving it. I also find that the Tenants were obligated to pay the monthly rent in the amount of \$2,800.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenants have failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not have a right under this Act to deduct all or a portion of the rent. Based on the foregoing, I find the Tenants have breached the Act and tenancy agreement by failing to pay rent when due and the Landlord is therefore entitled to an Order of Possession.

In regard to the Two Month Notice, the Landlord and the Tenants continued on with the hearing process and the Landlord was entitled to the payment of rent while the Tenants remained in the rental unit. Neither of the Notices to End tenancy were withdrawn and there is no evidence that the Landlord informed the Tenants he wanted the tenancy to continue. Therefore, I do not find that the tenancy was reinstated when the Landlord requested and accepted rent.

As the Landlord issued a Two Month Notice, which was not withdrawn, the Tenants are therefore entitled to the one month of compensation under the section 52 of the *Act* which states:

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

However, I find that I do not have to consider the merits of the notice itself, as the Tenants did not dispute it.

Based on the above, I find that the Landlord is entitled to the \$5,600.00 in unpaid rent for September and October, 2017. Pursuant to section 72 of the *Act*, the Landlord is also entitled to retain, in full, the \$1,400.00 security deposit paid by the Tenants to offset this amount. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$4,200.00; \$5,600.00 in outstanding rent, less the \$1,400.00 security deposit.

As the Tenants were not successful, I decline to grant them recovery of the \$100.00 filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,200.00. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: November 6, 2017

Residential Tenancy Branch