



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Introduction

This participatory hearing was convened after the issuance of an October 06, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlords' application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. The Adjudicator reconvened the landlords' application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Landlord Z.Z. (the landlord) and Tenant Z.C. (the tenant) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord stated that they would be representing the interests of both landlords in this hearing.

Preliminary Matters

At the outset of the hearing the tenant requested an adjournment as Tenant G.W. was not present at the hearing due to family obligations in another country.

Rule 7.9 of the RTB Rules of Procedure (the Rules) establishes the criteria for granting an adjournment and whether an adjournment is required to provide a fair opportunity for a party to be heard and the possible prejudice to each party.

RTB Policy Guideline # 13 states that co-tenants are jointly responsible for meeting the terms of the tenancy agreement and "are jointly and severally liable for any debts or damages relating to the end of the tenancy. This means the landlord can recover the full amount from all or any one of the tenants." I find that Tenant Z.C. attended the hearing and had a fair opportunity to be heard. I further find that the tenants are jointly liable for

any debts related to the tenancy and, in the absence of reasons why Tenant Z.C. could not represent both tenants or respond to the Landlords' Application for Dispute Resolution (the Application), the tenants are not prejudiced. For the above reason the tenants' request for an adjournment is dismissed.

The landlord testified that they sent the tenants a copy of the notice of this adjourned hearing by registered mail on October 13, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the notice of this hearing on October 18, 2017, the fifth day after its registered mailing.

The landlord provided written evidence that the Application, along with all supporting evidence, was served to each tenant by way of registered mail on October 05, 2017 as a part of the direct request proceeding package. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 88, 89 and 90 of the *Act*, I find the tenants were deemed served with the Application and supporting evidence on October 10, 2017.

On November 01, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution (the Amendment) to amend the monetary amount from \$1,800.00 to 7,269.64. The landlord provided copies of the Canada Post Tracking Numbers to confirm that the Amendment was sent by registered mailing to each tenant. In accordance with section 89 and 90 of the *Act*, I find that the tenants were deemed served with the Amendment on November 06, 2017, the fifth day after its registered mailing.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent by registered mail to the rental unit on September 16, 2017. In accordance with sections 88 and 90 of the *Act* I find that the 10 Day Notice, identifying \$1,800.00 in unpaid rent owing for this tenancy, was deemed served to the tenants on September 21, 2017.

Issues(s) to be Decided

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

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

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

Background and Evidence

The landlord provided written evidence that this tenancy began on July 03, 2017, with a monthly rent of \$1,800.00. The landlord testified that the monthly rent is due on the third day of each month. The landlord further testified that they continue to retain the security deposit in the amount of \$900.00. Term 20 of the tenancy agreement stipulates that the tenant is responsible for electricity charges. Term 56 of the tenancy agreement states that there is a 'rerent levy' of \$1,800.00 charged to the tenants if they move out prior to the natural expiration of the lease. The landlord did not provide any evidence or testimony as to how they arrived at the calculation for the 'rerent levy'.

A copy of the signed 10 Day Notice, dated September 15, 2017, with an effective date of September 27, 2017, was included in the landlord's evidence.

The landlord's Amendment dated November 01, 2017, was submitted into evidence and is for the unpaid monthly rent of \$1,800.00 for October 2017 and November 2017. The Amendment is also requesting electricity charges for July 2017 in the amount of \$5.97 and \$63.67 for September 2017 as well as \$1,800.00 for the 'rerent levy'.

Copies of two electricity bills, one dated July 17, 2017 and the other dated September 15, 2017, were also submitted into evidence.

The landlord testified that they are seeking to end the tenancy due to the unpaid rent.

The tenant testified that they have paid their rent to Tenant G.W., who is in another country and has not paid the rent to the landlords.

Analysis

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlords' evidence and the testimony of both parties, I find the tenants failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 46(4) of the *Act* within the same timeframe. Due to the failure of the tenants to take either of these actions within five days, I find the tenants are conclusively presumed to have accepted the end of this tenancy by October 01, 2017, the corrected effective date on the 10 Day Notice pursuant to sections 46(5) and 53(2) of the *Act*. In this case, the tenants and anyone on the premises were

required to vacate the premises by October 01, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Section 7 (2) of the *Act* establishes liability for not complying with the *Act* or a tenancy agreement:

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

RTB Policy Guideline # 4 states the following:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

I find that the landlord has failed to provide any evidence or testimony that the 'rerent levy' is a genuine pre-estimate of any loss that may occur as opposed to a penalty for breaching the lease. I further find that the landlord has not made any attempt to minimize the damage or loss as no loss has occurred at this time beyond the unpaid rent. For these reasons the landlords' request for the 'rerent levy' of \$1,800.00 is dismissed.

Based on the landlords' evidence and the testimony of both parties, I find the landlords are entitled to a monetary award of \$5,469.64 for electricity charges for July 2017 and September 2017 as well as the unpaid rent for September 2017, October 2017 and November 2017.

Although the landlords' application does not seek to retain the tenants' security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlords to retain the tenants' security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** 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.

Pursuant to section 67 of the *Act*, I grant a monetary Order in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent, recover electricity charges and to retain the tenants' security deposit:

Item	Amount
Unpaid July 2017 Electricity Charges	\$5.97
Unpaid September 2017 Electricity Charges	63.67
Unpaid September 2017 Rent	1,800.00
Unpaid October 2017 Rent	1,800.00
Unpaid November 2017 Rent	1,800.00
Less Security Deposit	-900.00
Total Monetary Order	\$4,569.64

The landlords are provided with this Order in the above terms and 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 Orders 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 29, 2017

Residential Tenancy Branch