



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenants applied on September 5, 2017 with an amendment made September 18, 2017 for:

1. An Order cancelling two notice to end tenancy - Section 46.

The Landlord applied on September 13, 2017 for:

1. An Order of Possession - Section 55; and
2. An Order for unpaid rent or utilities - Section 67.

The Tenants did not attend the hearing to pursue its application. As a result I dismiss their application. I accept the Landlord's evidence, including witness statements of service that the Tenants were served with the application for dispute resolution and notice of hearing in person on September 13, 2017 and the amended application in person on September 22, 2017 in accordance with Section 89 of the Act. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Background and Evidence

The tenancy started on August 13, 2015. Rent of \$1,100.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$550.00 as a

security deposit and \$200.00 as a pet deposit. The Tenant overpaid August 2017 rent by \$40.00. The Tenant failed to pay any rent for September 2017 and on September 5, 2017 the Landlord served the Tenants in person with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The effective date of the Notice is set out as September 15, 2017. The Notice sets out unpaid rent of \$1,050.00 due September 1, 2017. The Tenants have not moved out of the unit and have not paid any of the September 2017 arrears. The Tenants have not paid rent for October and November 2017.

The Landlord claims unpaid rent, including December 2017 rent.

Analysis

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides 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. Based on the undisputed evidence of unpaid rent for September, October and November 2017 I find that the Landlord is entitled to **\$3,250.00**. As rent is not yet due for December 2017 and as the Tenants are currently overholding the unit I dismiss the claim for this rent with leave to reapply. Deducting the combined security and pet deposit of **\$750.00** plus zero interest leaves **\$2,500.00** owed by the Tenants.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposits** and interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,500.00**. If necessary, this order may be filed in the Small Claims 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 30, 2017

Residential Tenancy Branch