



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MT CNR
Landlord: OPR MNR MNDC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on November 30, 2017.

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

- more time to make an application to cancel the Landlord's 10 Day Notice to End Tenancy (the Notice); and,
- to cancel the Notice for unpaid rent or utilities.

The Landlord applied for the following relief:

- An order of possession for unpaid rent or utilities; and,
- A monetary order for unpaid rent or utilities.

The Landlord and both Tenants attended the hearing and provided affirmed testimony.

The Landlord stated that she sent each of the Tenants a copy of her Application Package and evidence to the rental unit by registered mail on September 20, 2017. The Landlord provided tracking numbers (and registered mail receipts) to support service in this manner. The Tenants deny receiving the packages. However, I have considered the Landlord's proof of service in making my findings on this matter. In order to determine if the Landlord has sufficiently served the Tenants with her application and evidence, I turn to section 90 of the Act, which states the following:

When documents are considered to have been received

- 90** A document given or served in accordance with section 88 [*how to give or serve documents generally*] or 89 [*special rules for certain documents*] is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed

[My emphasis added]

I find the tenants are deemed to have received their packages on September 25, 2017, the fifth day after their registered mailing, pursuant to Section 90 of the *Act*. I further note that refusal or neglect to accept registered mail is not a ground for review under the *Act*.

Subsequently, the Landlord applied, on November 15, 2017, to amend her initial application (to include a monetary order) for strata fines the Tenants have accrued over the last few months. However, the Landlord was unable to provide proof of service for how she sent the amendment to the Tenants, and the Tenants stated that they never got the amendment package. Ultimately, I find there is insufficient evidence to confirm that the Landlord sent the package, as specified, and that the Tenants received the Landlord's amendment. As such, I dismiss this portion of the Landlord's application, with leave to reapply.

The Tenants stated that they sent their application package to the Landlord's residence, as listed on the application form. However, they were unable to provide any proof of service or tracking information supporting service in this manner. Further, the Landlord stated that she has not received anything from the Tenants. I do not find the evidence before me sufficiently demonstrates that the Tenants served the Landlord with their application package. As such, I dismiss the Tenants' application in full, without leave.

As stated in the hearing, the only issues I will consider in this hearing are those relating to the Landlord's application for an order of possession and monetary order for unpaid rent.

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

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord provided a copy of the tenancy agreement into evidence. This agreement specifies that total monthly rent is comprised of \$800.00 plus \$253.75 in strata fees. This totals \$1,053.75 in rent, per month, and is due on the first day of each month.

The Landlord testified that she recently bought the rental unit, as of the middle of August 2017. She testified that the Tenants have not paid her any money since she took over ownership. The Tenants testified that they received the Notice on September 6, 2017, the same day the Landlord stated she posted it to the door of the rental unit.

The Landlord stated that she is owed rent for half of August 2017, the date she took over ownership. She further stated that she is owed rent for September, October, and November of 2017, and the Tenants have failed to pay her anything.

The Tenants stated that the previous owner of the rental unit was a relative of theirs, and they had a payment arrangement with them. The Tenants stated that they paid rent to the previous owner for the month of August. They did not provide proof that this occurred. The Landlord stated that she has not received any money for August rent. The Tenants did not dispute the Landlord's statements with respect to their non-payment of rent since September of 2017.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. In this situation, I find the Tenants have failed to prove they had any authority under the *Act* to not pay any rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

First, I turn to the Landlord's claim with respect to rent for the last half of August 2017. I note that the Landlord has not provided any Statement of Adjustments for the purchase of the rental property, or transaction details showing the financial details (including any potential rent accruals or payments) as of the time she bought the rental unit. Although the Landlord stated that she received no rent money for the last half of August, when she took over ownership, there is a lack of evidence from the Landlord on this matter. Also, the Tenants stated that they paid rent for August to the previous owner but they did not provide any further evidence to support this. Ultimately, neither party has provided compelling evidence with respect to rent that was paid in August. I find there is insufficient evidence before me to show that the Tenants owed any rent for the last half of August, given the lack of clarity surrounding what may have been paid to the previous owner at the beginning of August.

With respect to rent owing for the months of September, October, and November of 2017, I find the evidence before me shows that the Tenants have failed to pay any rent to the Landlord during this time. As such, when the Landlord issued the Notice on September 6, 2017, I am satisfied that September rent was outstanding at that time.

The Tenants acknowledged getting the Notice on September 6, 2017. They had 5 days to pay rent in full or file an application for dispute resolution. Although the Tenants applied to dispute the Notice on September 14, 2017, this application was beyond the 5 day window to apply. Furthermore, they were unable to prove they served the Landlord with their application package, as explained above, and their application has been dismissed. Also, there is no evidence that the Tenants paid any rent after receiving the Notice. As such, I find the Tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

After considering the evidence before me, I find there is sufficient evidence before me to demonstrate that the Tenants owe and have failed to pay rent for September, October, and November of 2017. I find the Landlord is entitled to a monetary order for these 3 months at a rate of \$1,053.75 per month (comprised of \$800.00 plus \$253.75 in strata fees which were included in the tenancy agreement as payable by the Tenants). In total, I grant the Landlord a monetary order for \$3,161.25.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail 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 **\$3,161.25** comprised of rent owed. This order must be served on the tenants. If the tenants fail 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.

The Landlord's application for monetary compensation for unpaid strata fines accumulated by the Tenants is dismissed with leave to reapply.

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