



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **Landlord:** OPRM-DR FFL
 Tenants: CNC OLC

Introduction

This participatory hearing was convened after the issuance of an October 20, 2017, interim decision by an Adjudicator. The Adjudicator determined that the Landlord's Application for Dispute Resolution (Landlord's 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 landlord's 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.

The tenants filed a Tenants' Application for Dispute Resolution (Tenants' Application) which was joined to the Landlord's Application for this participatory hearing.

The tenants sought:

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

The tenants did not attend this hearing, although I waited until 11:20 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rules 7.1 and 7.3 of the RTB Rules of Procedure provides as follows:

Commencement of the hearing - The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenants, I order the Tenants' Application dismissed, without liberty to reapply.

The landlord testified that the notices of this reconvened hearing were sent by registered mail to each tenant on November 08, 2017. The landlord provided copies of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with section 89 of the *Act*, I find the tenants were deemed served with the notices on November 13, 2017.

The landlord testified that the Landlord's Application for Dispute Resolution (the Landlords' Application), and evidentiary package were sent to the tenants by way of registered mail on October 19, 2017, as a part of the direct request proceeding package. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were deemed served with the Landlord's Application and evidentiary package on October 24, 2017, five days after its mailing.

The landlord entered into evidence a signed and witnessed Proof of Service document attesting to the fact that the One Month Notice was posted to the door of the rental unit on September 14, 2017. In accordance with section 88, I find the tenants were deemed served with the One Month Notice on September 17, 2017.

The landlord also entered into evidence a signed and witnessed Proof of Service document attesting to the fact that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) was posted to the door of the rental unit on October 04, 2017. In accordance with section 88, I find the tenants were deemed served with the 10 Day Notice on October 07, 2017.

At the outset of the hearing the landlord sought to increase their monetary claim from \$1,051.00 to \$2,202.00 to reflect the tenant's failure to pay \$1,051.00 in monthly rent for November 2017, the additional month of unpaid rent waiting for this hearing and for the \$25.00 non-sufficient funds fee (N.S.F. fee) charged by their financial institution as well as a \$25.00 administrative late fee as per the tenancy agreement.

Residential Tenancy Rule of Procedure 4.2 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. I allow the amendment for the unpaid rent as this was clearly rent that the tenants would have known about and resulted since the landlord submitted their Landlord's Application.

I will not allow the amendment for the additional N.S.F. fee charged by the landlord's financial institution and administrative late fee charged by the landlord for November 2017 as these fees were not listed on the Landlord's Application. I find that an amendment to add these additional fees may prejudice the tenants as they did not know the Landlord's Application would also consider these fees.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for the One Month Notice or for the unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for the Landlord's Application from the tenant?

Background and Evidence

The landlord gave written evidence that this tenancy began on November 26, 2009, with a current monthly rent of \$1,051.00 due on the first day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$500.00. Term 10 of the tenancy agreement allows for a \$25.00 administrative late fee.

A copy of the signed 10 Day Notice dated October 04, 2017, identifying \$1,051.00 in rent, \$25.00 N.S.F. fee and \$25.00 administrative late fee owing for this tenancy, with an effective date of October 17, 2017, was included in the landlord's evidence.

A copy of the signed One Month Notice dated September 06, 2017, with an effective date of October 31, 2017, was also included in the landlord's evidence.

The landlord testified that the tenants are still in the rental unit and have not made any payments toward the tenancy since the 10 Day Notice was issued.

Analysis

Section 55(1) of the *Act* reads as follows:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(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.

I find that the One Month Notice is in compliance with section 52 of the *Act*. Based on my decision to dismiss the Tenants' Application and in accordance with section 55(1) of the *Act*, I find that this tenancy ended on the effective date of the One Month Notice, October 31, 2017. In this case, the tenants and anyone on the premises were required to vacate the premises by October 31, 2017. As this has not occurred, I find that the landlord is 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, subsections (c) and (d), of the *Residential Tenancy Regulations* allows for a landlord to recover a service fee charged by their financial institution and for a \$25.00 administrative fee for late payment of rent.

Based on the written evidence and undisputed affirmed testimony, I find that the landlord is entitled to a monetary award of \$2,152.00 for unpaid rent, N.S.F. and administrative fees for October 2017 as well as the unpaid rent for November 2017 owing for this tenancy.

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

As the landlord has been successful in their Landlord's Application, I allow the landlord to recover the filing fee from the tenants

Conclusion

I dismiss the Tenants' Application in its entirety, without leave to reapply.

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 any occupant 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 landlord's favour under the following terms, which allows the landlord to recover unpaid rent, recover N.S.F. and administrative fees, to retain the tenant's security deposit and to recover the filing fee for the Landlord's Application:

Item	Amount
Unpaid October 2017 Rent	\$1,051.00
N.S.F. fee charged by the financial institution	25.00
Administrative Late Fee	25.00
Unpaid November 2017 Rent	1,051.00
Less Security Deposit	-500.00
Filing Fee for this Application	100.00
Total Monetary Order	\$1,752.00

The landlord is 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: December 05, 2017

Residential Tenancy Branch