



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF
 CNR, O

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and other matters.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession, a Monetary Order for unpaid rent, and the recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenants did not attend. As the Landlord was present and prepared to proceed, the hearing proceeded based on the Landlord's Application. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlord testified in the hearing that the Application and the Notice of Hearing were personally served on the Tenants on September 30, 2017. As a result of the Landlord's testimony and in the absence of evidence to the contrary, I find that the Tenants were served the Application and the Notice of Hearing on September 30, 2017, the date the documents were personally served on them.

At the request of the Landlord, copies of the Decision and any applicable Orders will be e-mailed to him at the e-mail address provided in the hearing.

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

Preliminary Matters

On October 16, 2017, an Amendment to an Application for Dispute Resolution (the “Amendment”) was received by the Residential Tenancy Branch (the “Branch”) from the Landlord. In the Amendment the Landlord increased their monetary claim to \$5,800.00 to include additional rent owed since their Application was filed and a request to retain the security deposit paid by the Tenants to offset this amount. The Landlord testified that the Amendment was personally served on the Tenants on October 25, 2017. As a result of the Landlord’s testimony and in the absence of evidence to the contrary, I find that the Tenants were personally served with the Amendment on October 25, 2017, and the Application is therefore amended pursuant to the *Act* and the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent and to the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the one-year fixed-term tenancy began May 11, 2017, and that rent in the amount of \$1,400.00 is due on the first day of each month. The tenancy agreement also indicates that a security deposit in the amount of \$700.00 was paid by the Tenants, which the Landlord testified he still holds.

The Landlord testified that the Tenants only paid partial rent for August 2017, and that when they failed to pay rent for September, 2017, a 10 Day Notice to End tenancy for Unpaid Rent or Utilities (the “10 day Notice”) was posted to the door of the Tenant’s rental unit on September 13, 2017. In support of his testimony the Landlord submitted a Proof of Service Notice to End Tenancy (the “Proof of Service”) confirming that the 10 Day Notice was served in the manner described above.

The 10 Day Notice in the documentary evidence before me, dated September 13, 2017, has an effective vacancy date of September 23, 2017, and indicates that as of

September 1, 2017, the Tenants owed \$1,600.00 in rent; \$200.00 for August and \$1,400.00 for September.

The Landlord testified that since the service of the 10 Day Notice, the Tenants have not paid any rent. The Landlord also testified that on December 2, 2017, the Tenants advised him via text message that they had vacated the rental unit. Although the Tenants have now vacated the rental unit, the Landlord requested that he still be issued an Order of Possession and stated that the tenants currently owe \$5,800.00 in rent: \$200 for August, 2017, and \$1,400.00 a month for September, October, November, and December, 2017.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants were deemed served with the 10 Day Notice on September 16, 2017, three days after it was posted to the door of their rental unit. I also find that the Tenants were obligated to pay the monthly rent in the amount of \$1,400.00, on time and in full each month.

Although the Tenants filed an Application seeking to dispute the 10 Day Notice within the five day period, they did not appear at the hearing to present evidence in support of their Application. As the Landlord, who is the Respondent named in the Tenants Application, appeared at the hearing, the Tenants' Application is dismissed without leave to reapply.

Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The 10 Day Notice in the documentary evidence before me is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form. As a result, I find that the 10 Day Notice complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession.

Based on the documentary evidence and testimony before me, I find that the Tenants owe to the Landlord \$5,800.00 in unpaid rent. Pursuant to section 72 of the *Act*, I also

find that the Landlord is entitled to recover the \$100.00 filing fee and to retain, in full, the \$700.00 security deposit paid by the Tenants to offset the above noted outstanding rent.

As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$5,200; \$5,800.00 in back owed rent, plus \$100.00 for the filing fee, less the \$700.00 security deposit paid by the Tenants.

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 and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$5,200.00. 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: December 8, 2017

Residential Tenancy Branch