



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the “Application”) that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and the recovery of the filing fee and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlords who both provided affirmed testimony. The Tenants did not attend. The Landlords were 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 and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of documents as explained below.

The Landlords provided a Proof of Service of Notice of Direct Request Proceeding as well as affirmed testimony in the hearing that the Application, the Notice of Direct Request, and the evidence package were sent individually to each of the Tenants on October 10, 2017, by registered mail. They also provided copies of the registered mail receipts and a signed Proof of Service Notice to End Tenancy (the “Proof of Service”) for each Tenant in the documentary evidence before me. As a result, I find that the Tenants were deemed served the Application, the Notice of Direct Request, and the evidence submitted for the Direct Request Proceeding on October 15, 2017, five days after the documents were sent by registered mail.

The Landlords also provided affirmed testimony that the Notice of Hearing and additional evidence, along with all documents and evidence previously served, was sent individually to each of the Tenants by registered mail on October 20, 2017. The Landlords provided the registered mail receipts in the evidence before me. As a result, I

find that the Tenants were deemed served with the Notice of Hearing and additional evidence on October 25, 2017, five days after they were sent by registered mail.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Landlords, copies of the Decision and any applicable Orders will be e-mailed to them at the e-mail address provided in the hearing.

Preliminary Matters

On October 20, 2017, the Residential Tenancy Branch (the "Branch") received an Amendment to an Application for Dispute Resolution (the "Amendment") filed by the Landlords increasing their monetary claim from \$3,750.00 to \$6,250.00. The Landlords testified that the Tenants were individually sent a copy of the Amendment and evidence by registered mail on October 20, 2017, and provided the registered mail receipts in the documentary evidence before me. As a result, I find that the Tenants were deemed served with the Amendment and additional evidence on October 25, 2017, five days after they were sent by registered mail. Based on the foregoing, the Application was amended in accordance with the *Act* and the Rules of Procedure.

In the hearing the Landlords testified that the Tenants continue to occupy the rental unit and requested to amend the Application to include additional loss of rent for since the filing of their Application and the Amendment. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, I have amended the Application to include outstanding rent owed by the Tenants to the Landlords since the Amendment was filed on October 20, 2017.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Are the Landlords entitled to monetary compensation for unpaid rent and the recovery of the filing fee and to retain the security deposit and pet damage deposit paid by the Tenants to offset any amounts owing 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 commenced on November 1, 2016, and that rent in the amount of \$2,500.00 is due on the first day of each month. The Tenancy agreement also indicates that a security deposit of \$1,250.00, and a pet damage deposit of \$500.00 were paid by the Tenants and the Landlords confirmed in the hearing that they still hold these amounts.

The Landlords testified that the Tenants routinely pay the rent late and are often in arrears at the start of the next month. The Landlords testified that on September 1, 2017, the Tenants owed \$1,250.00 for August, 2017, and \$2,500.00 for September, 2017, and that as a result a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was sent to the Tenants by registered mail on September 15, 2017. In support of their testimony the Landlords provided a copy of the 10 Day Notice, e-transfer records, and a registered mail receipt dated September 15, 2017.

The 10 Day Notice in the documentary evidence before me, dated September 15, 2017, has an effective vacancy date of September 30, 2017, and indicates that as of September 1, 2017, the Tenants owed \$3,750.00 in unpaid rent. The Landlords testified that the Tenants continue to reside in the rental unit and that since being served with the 10 Day Notice, the Tenants have paid a total of \$2,500.00; \$1,250.00 on December 1, 2017, \$600.00 on December 4, 2017, and \$650.00 on December 6, 2017.

The Landlords testified that the Tenants currently owe \$8,750.00 in unpaid rent; \$1,250.00 for September, 2017, and \$2,500.00 a month for October-December, 2017. As a result, the Landlords requested an Order of Possession be issued for 1:00 P.M. on December 31, 2017.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

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 20, 2017, five days after it was sent by registered mail. I also find that the Tenants are obligated to pay the monthly rent of \$2,500.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenants have failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period. Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 30, 2017, and the Landlords are therefore entitled to an Order of Possession. At the request of the Landlords, the Order of Possession will be effective at 1:00 P.M. on October 31, 2017.

I also find that the Landlords are entitled to \$8,850.00; \$8,750.00 in unpaid rent and \$100.00 for the recovery of the filing fee. At the request of the Landlords and pursuant to section 72 of the *Act*, the Landlords are entitled to retain, in full, the security deposit and pet damage deposit paid by the Tenants in partial recovery of these amounts. The Landlords are therefore entitled to a Monetary Order in the amount of \$7,100.00 for the balance of these amounts owed pursuant to section 67 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **at 1:00 P.M. on December 31, 2017, after service of this Order** on the Tenants. The Landlords are 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$7,100.00. The Landlords are 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 13, 2017

Residential Tenancy Branch