



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 OPR, MNR, FF

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”).

I note that 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*.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession and 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 Agent for the Landlord, who provided affirmed testimony. The Tenants did not attend. As the Agent was present and prepared to proceed, the hearing proceeded based on the Landlords Application. The Agent 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 Respondent 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 these documents as outlined below.

The Agent testified that the Application, the Notice of Hearing, and the evidence package were sent individually by registered mail to each of the Tenants on October 21, 2017, and provided copies of the registered mail receipts. The Agent also stated that the Tenants received and signed for the packages on November 21, 2017,

and provided copies of the signatures obtained by the mail delivery service provider on that date. As a result of the foregoing and pursuant to section 88 of the *Act*, I find that the Tenants were served with the above noted documents on November 21, 2017, the date they received and signed for them.

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

Preliminary Matters

At the outset of the hearing the Agent testified that neither they nor the Landlord were aware until the commencement of the hearing that the Tenants had filed an Application which has been crossed with the Landlord's Application. The Agent also testified that the Landlord has not received a copy of the Tenant's Application, Notice of Hearing, or any evidence.

Based on the undisputed testimony of the Agent, and as the Tenants did not appear to present any evidence or testimony at the hearing, I find that the Landlord was not served with the Tenants' Application, evidence, or Notice of Hearing in accordance with the *Act* and the Rules of Procedure. I find that the opportunity to know the case against you is a fundamental tenant of the dispute resolution process and as the Tenants did not serve the Landlord a copy of their Application and Notice of Hearing, I find that the Landlord did not have notice of the case against them. As a result, I find that it would be prejudicial to the Landlord and a breach of procedural fairness to allow the Tenants' Application or to accept for consideration any of their evidence. Based on the above and as the Tenants did not appear at the hearing to present evidence in support of their Application, their Application is dismissed without leave to reapply. The hearing therefore proceeded as scheduled based only on the Landlord's Application.

The Agent also testified that since the time the Application was filed, the amount of outstanding rent has increased and requested to amend the Application to include the additional rent amounts owing. 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. The Landlord's Application is therefore amended in accordance with 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 a Monetary Order for unpaid rent and for the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

In the hearing the Agent testified that the tenancy began approximately one year ago and that although there is no written tenancy agreement, there is a verbal tenancy agreement in place whereby the Tenants are required to pay \$2,900.00 in rent, which is due on the 20th day of each month. In support of the terms of the verbal tenancy agreement, the Agent submitted copies of text messages and e-mail money transfers for my consideration.

The Agent testified that the Tenants failed to pay rent when due and that as a result, a 10 Day Notice was served on the Tenants on October 21, 2017. The 10 Day Notice in the documentary evidence before me, dated October 21, 2017, has an effective vacancy date of October 30, 2017, and indicates that as of October 20, 2017, the Tenants owed \$2,900.00 in outstanding rent. The Agent testified that the 10 Day Notice was posted to the door of the Tenants' rental unit on October 21, 2017, and that the Tenants acknowledged receipt of the 10 Day Notice on that date via text message. In support of this testimony the Agent submitted copies of the text messages noted above.

The Agent testified that the Tenants continue to reside in the rental unit and have not paid the rent for October, November, or December, 2017. As a result, the Agent stated that the Tenants currently owe \$8,700.00 in outstanding rent.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenants were served with the 10 Day Notice on October 21, 2017, the date they acknowledged receiving it via text message.

As the Tenants failed to attend the hearing to present any evidence or testimony in support of their Application, their Application is dismissed without leave to reapply. I

note that 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*.

Section 52 of the *Act* states the following:

Form and content of notice to end tenancy

52 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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

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

Based on the testimony and documentary evidence before me, I find that the Tenants owe the Landlord \$8,700.00 in unpaid rent for October, November and December, 2017. Pursuant to section 72 of the *Act*, the Landlord is also entitled to \$100.00 for the recovery of the filing fee. As a result of the foregoing, I find that the Landlord is entitled to a Monetary Order in the amount of \$8,800.00.

Conclusion

The Tenants' Application is dismissed in its entirety without leave to reapply.

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

Pursuant to sections 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$8,800.00. 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: January 12, 2018

Residential Tenancy Branch