



Dispute Resolution Services

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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 an Order of Possession and for a Monetary Order for unpaid rent and utilities and 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. 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 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 explained below.

The Landlord provided a witnessed and signed Proof of Service Notice of Direct Request Proceeding for each Tenant as well as affirmed testimony that the Application for Dispute Resolution by Direct Request, the Notice of Direct Request, and the evidence package were personally served on each of the Tenants on October 23, 2017. As a result, I find that the Tenants were personally served with these documents on October 23, 2017. The Landlord also testified that the Notice of Hearing was personally served on each of the Tenants on October 27, 2017. As a result, I find that the Tenants were personally served with these documents on October 27, 2017.

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 Landlord, a copy of the decision and any applicable Orders will be e-mailed to them at the e-mail address provided by them in the hearing.

Preliminary Matters

The Landlord testified that since the time the Application was filed, the amount of outstanding rent and utilities has increased and requested to amend their Application to include these increased costs. The Landlord also requested to amend their Application to include the retention of the security deposit paid by the Tenants to offset the outstanding rent and utilities owed. 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 to include the increased rent and utilities owed and the retention of the security deposit to offset these amounts in accordance with the *Act* and the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent and utilities pursuant to section 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Is the Landlord entitled to retain the security deposit paid by the Tenants pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the tenancy began on August 1, 2017, and that rent in the amount of \$900.00 is due on the first day of each month. The tenancy agreement indicates that utilities, including water, are not included in the rent, and that a security deposit in the amount of \$450.00 was paid. The Landlord testified that these are the correct terms of the tenancy agreement and that they still hold the \$450.00 security deposit paid by the Tenants.

The Landlord testified that when the tenants did not pay the rent and utilities as required, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) was served. The 10 Day notice in the documentary evidence before me, dated October 1, 2017, has an effective vacancy date of October 10, 2017, and indicates that as of October 1, 2017, the Tenants owed \$900.00 in rent and \$45.00 in utilities. The Landlord testified that the 10 Day Notice was personally served on the Tenants on October 12, 2017, and that no money has been received from the Tenants since that date.

The Landlord stated that they personally served a utility demand letter and a copy of the water bill and on the Tenants on October 2, 2017, prior to the service of the 10 Day Notice. The Landlord stated that the water bill was for a four month period and that the Tenants were only responsible for \$45.00 of the bill; the portion relating to water usage since the start of their Tenancy.

The Landlord testified that since the service of the 10 Day Notice, the tenants have continued to reside in the property and that no rent or utilities have been paid. The Landlord stated that as a result, the Tenants currently owe \$3,600.00 in outstanding rent for October 2017 – January 2018, and that they owe \$180.00 in outstanding utilities as an additional water bill has now been received for \$135.00.

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 section 88 of the *Act*, I find that the Tenants were personally served with the 10 Day Notice on October 12, 2017.

I also find that the Tenants were obligated to pay the monthly rent, on time and in full each month and to pay the cost of water for the property as the tenancy agreement specifically indicates that this is not included in the cost of rent. However, as the Landlord testified that the utility demand letter and the copy of the utility bill was served on the Tenants on October 2, 2017, I find that the outstanding utilities cannot be considered as part of the 10 Day Notice, as the 10 day Notice was not served 30 days after the Tenants were given notice of the outstanding utilities and a written demand for payment in accordance with section 46(6) of the *Act*. In any event, as the Tenants also owed \$900.00 in rent at the time the 10 Day Notice was served, I am satisfied that the 10 Day Notice is valid.

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 that they 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 corrected effective date of the 10 Day Notice, October 22, 2017, 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 are responsible for \$3,600.00 in outstanding rent and \$180.00 in outstanding water bills accrued during their tenancy. Pursuant to section 72 of the *Act*, I find that the Landlord is also entitled to the recovery of the \$100.00 filing fee, and to retain, in full, the security deposit paid by the Tenants in partial repayment of the above noted costs. Based on the

foregoing, the Landlord is entitled to a Monetary Order in the amount of \$3,430.00; \$3,600.00 in outstanding rent, plus \$180.00 in utilities, plus \$100.00 for the recovery of the filing fee, less the \$450.00 security deposit.

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 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 Landlord a Monetary Order in the amount of \$3,430.00. 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