



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, FF, CNR

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants' applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlords attended the hearing via conference call and provided undisputed affirmed testimony. The tenants did not attend. The landlords stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on November 27, 2017 which was later returned by Canada Post as "unclaimed". The landlords also confirmed that they were served with the tenants' notice of hearing package and are aware of the tenants' application for disputes issues. I accept the landlords' undisputed affirmed evidence and find that both parties have been properly served as per sections 88 and 89 of the Act. Although the tenants did not receive the landlords package, they are deemed served as per section 90 of the Act 5 days later on December 2, 2017.

After waiting 18 minutes past the start of the scheduled hearing time, the tenants' application for dispute was dismissed without leave to reapply.

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without leave to reapply. I make no findings on the merits of the matter.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenants' claim and the landlords' cross claim and my findings around each are set out below.

This tenancy began on June 1, 2016 on a fixed term tenancy ending on November 30, 2016 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated June 1, 2016. The monthly rent is \$1,500.00 payable on the 1st day of each month. A security deposit of \$750.00 was paid on June 1, 2016.

The landlords seek an order of possession for unpaid rent as a result of a 10 Day Notice dated November 5, 2017 which was served to the tenants on November 6, 2017 by posting it to the rental unit door. The 10 Day Notice sets out that the tenants failed to pay rent of \$2,800.00 which was due on November 1, 2017.

The landlords clarified that the tenants have failed to pay rent of \$1,500.00 for November 2017 and owes unpaid rent for August 2017 of \$1,300.00. The landlords also claim that as of the date of this hearing no rent has been paid since service of the 10 Day Notice dated November 5, 2017.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlords and find that the tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. The tenants' application for dispute was dismissed without leave to reapply as they failed to attend and present evidence and make submissions. In accordance with subsection 46(5) of the Act, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by November 15, 2017. As that has not occurred, I find that the landlord are entitled to a two-day order of possession.

The landlords having been successful are entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlords are granted an order of possession.

The landlords are granted a monetary order for \$100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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 25, 2018

Residential Tenancy Branch