



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNSD, FF; CNC, CNR, MNDC, OLC, ERP, PSF

Introduction

This hearing dealt with the landlord's two applications pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent and utilities and for cause, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 6, 2018 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated February 6, 2018 ("1 Month Notice"), pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33; and
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65.

The two tenants did not attend this hearing, which lasted approximately 29 minutes. The landlord and her lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's lawyer confirmed that she had permission to speak on the landlord's behalf at this hearing. The landlord did not testify at this hearing.

The landlord's lawyer testified that the two tenants were each served with the landlord's application for dispute resolution package on March 28, 2018, by way of registered mail. The landlord provided two Canada Post receipts and tracking numbers with her application. In accordance with sections 89 and 90 of the Act, I find that both tenants were deemed served with the landlord's application on April 2, 2018, five days after their registered mailings.

I notified the landlord's lawyer that I could not consider the landlord's letter from the electrician that was served to the tenants on April 5, 2018, by way of posting to the tenants' rental unit door. I informed her that it was deemed served to the tenants on April 8, 2018, three days after posting, as per sections 88 and 90 of the Act, but that was late since it was less than 14 days prior to this hearing on April 19, 2018, contrary to Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*.

The landlord's lawyer testified that the tenants were served with the landlord's 10 Day Notice and 1 Month Notice on February 7, 2018, both by way of posting to the rental unit door. The 10 Day Notice indicates an effective move-out date of February 17, 2018 and the 1 Month Notice indicates an effective move-out date of March 9, 2018. In accordance with sections 88 and 90 of the Act, I find that both tenants were deemed served with the landlord's 10 Day Notice and 1 Month Notice on February 10, 2018, three days after their postings. The tenants disputed both notices in their application.

Preliminary Issue - Landlord's Two Applications

The landlord's lawyer stated that the landlord mistakenly filed two applications at this hearing. The file numbers for both applications are noted on the front page of this decision. At the hearing, the landlord's lawyer confirmed that the landlord filed two applications on the same date for essentially the same relief, except one claimed a lower amount of \$5,000.00 rent than the other that claimed \$8,000.00.

The landlord's lawyer asked to proceed on the higher amount claim only ("second application") and asked for the lower amount claim ("first application") to be withdrawn. I notified the landlord that the first application would be dismissed without leave to reapply and the landlord would not get the \$100.00 application filing fee back, to which the landlord's lawyer agreed.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's second application to increase her monetary claim to include March and April 2018 rent of \$3,000.00 for each month and utilities totalling \$2,700.00. The tenants are aware that rent and utilities are due on the first day of each month. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice and 1 Month Notice required them to vacate earlier for failure to pay the full rent and utilities due. Therefore, the tenants knew or should have known that by failing to pay their rent and utilities, the landlord would pursue all unpaid rent and utilities at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent and utilities, despite the fact that they did not attend this hearing.

The landlord's lawyer also confirmed that the landlord did not receive a security deposit from the tenants and that the landlord mistakenly applied to retain the deposit in her second application. Accordingly, this portion of the landlord's second application is dismissed without leave to reapply.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the *RTB Rules of Procedure* provides as follows:

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.

In the absence of any appearance by the tenants, I order their entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice and a 1 Month Notice, the landlord is entitled to an order of possession, provided that the notices meet the requirements of section 52 of the *Act*.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities or cause?

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee for the second application?

Background and Evidence

The landlord's lawyer testified regarding the following facts. This month-to-month tenancy began in August 2017. Monthly rent in the amount of \$3,000.00 and an additional \$300.00 for utilities, are payable on the first day of each month. A security deposit was not paid for this tenancy. No written tenancy agreement was signed, only a verbal agreement was reached between the parties. The tenants continue to reside in the rental unit. The rental unit is a five-bedroom, four-bathroom house of approximately 2,500 square feet, situated on a fifty-acre farm.

The landlord seeks an order of possession for unpaid rent and utilities, a monetary order of unpaid rent and utilities totalling \$13,700.00, and to recover the \$100.00 filing fee for the second application.

The landlord's lawyer explained that the landlord issued the 10 Day Notice for unpaid rent of \$5,000.00, due on February 1, 2018, which includes a balance of \$2,000.00 for December 2017 rent, since the tenants paid \$1,000.00 towards the \$3,000.00 total rent on January 10, 2018, and \$3,000.00 for January 2018 rent. She maintained that the notice also included \$2,100.00 for utilities due on February 6, 2018, pursuant to a demand letter issued on the same date, which the landlord provided. The landlord's lawyer explained that utilities of \$300.00 per month were unpaid from August 2017 to February 2018, totalling \$2,100.00.

The landlord's lawyer testified that after the landlord issued the 10 Day Notice, the tenants did not pay rent of \$3,000.00 for each of March and April 2018, totalling \$6,000.00, and utilities from March to April 2018 of \$300.00 for each month, totalling \$600.00.

The landlord's lawyer indicated that the landlord issued the 1 Month Notice for a variety of reasons, including that the tenants repeatedly paid rent late more than three times during this tenancy.

Analysis

The landlord provided undisputed evidence, as the two tenants did not attend this hearing. The tenants failed to pay the full rent due on February 1, 2018, within five days

of being deemed to have received the 10 Day Notice. The tenants filed an application to dispute the 10 Day Notice on February 9, 2018, pursuant to section 46(4) of the *Act*, within the five day time limit. However, the tenants did not appear at this hearing in order to provide evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days led to the end of this tenancy on February 20, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by February 20, 2018. As this has not occurred, I find that the landlord is entitled to a seven (7) day Order of Possession, pursuant to section 55 of the *Act*. The landlord's lawyer confirmed that the landlord would be willing to give the tenants seven days, rather than two days, to move out because they have children. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Since I have granted an order of possession based on the 10 Day Notice, I do not need to make a determination based on the 1 Month Notice, dated February 6, 2018. The landlord's second application for an order of possession for cause based on the 1 Month Notice, is dismissed with leave to reapply.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which in this case is on the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent totalling \$11,000.00 from December 1, 2017 to April 30, 2018 and utilities totalling \$2,700.00 from August 1, 2017 to April 30, 2018. I find that the tenants owe the landlord rent and utilities, totalling \$13,700.00, from August 1, 2017 to April 30, 2018. Although the landlord issued the demand letter for the utilities on February 6, 2018, which is the same date as the 10 Day Notice, I accept the landlord's lawyer's testimony that the utilities are unpaid well after the demand letter was issued and that the tenants owe these utilities pursuant to their verbal tenancy agreement with the landlord at \$300.00 per month.

As the landlord was successful in the second application, I find that she is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective seven (7) days after service on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$13,800.00 against the tenants. 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.

The landlord's first application is dismissed without leave to reapply and the landlord is required to bear the cost of the \$100.00 filing fee paid for that application.

The landlord's second application to keep the tenants' security deposit is dismissed without leave to reapply.

The landlord's second application for an order of possession for cause based on the 1 Month Notice, dated February 6, 2018, is dismissed with leave to reapply.

The tenants' entire application is dismissed without leave to reapply.

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: April 19, 2018

Residential Tenancy Branch