



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to cross-applications for dispute resolution under the *Residential Tenancy Act* (the *Act*). The Tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) and the Landlords applied for an Order of Possession and Monetary Order for unpaid rent under the Direct Request process. The Landlord’s application was not able to continue through the Direct Request process due to the application by the Tenant to dispute the 10 Day Notice. Instead, both applications were joined and a conference call hearing was scheduled. The Landlord also applied for the recovery of their filing fee paid for this application.

Both Landlords (the “Landlord”) were present for the duration of the hearing, while no one called in for the Tenant during the approximately 23 minute long teleconference. Service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed. The Landlord testified that they sent the Notice of Hearing, along with a copy of their evidence to the Tenant on April 27, 2018 by registered mail. The registered mail tracking number was provided during the hearing and is included on the front page of this decision. The tracking number confirms on the Canada Post website that the package was delivered on April 30, 2018. As the Landlords properly served the Tenant, and the Tenant filed their own application to be heard at the same time, I find the Tenant had notice of the hearing, despite not attending.

The Landlord testified that they did not receive the Notice of Hearing from the Tenant’s application, nor did they receive a copy of the Tenant’s evidence. They were aware of the hearing date and time due to the information they received regarding their own application for dispute resolution.

The two landlords who were present at the hearing were affirmed to be truthful in their testimony.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy be set aside?

Are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to a Monetary Order for unpaid rent?

Preliminary Matters

Rule 7.3 of the Rules of Procedure provides that if a party does not attend a hearing, the hearing may continue in their absence or an application may be dismissed. Due to the Tenant not attending the hearing, the application related to the Tenant's claim to cancel the 10 Day Notice is dismissed without leave to reapply. The hearing regarding the Landlord's application continued in the absence of the Tenant.

Background and Evidence

The Landlord testified that the tenancy began on April 2, 2018. A tenancy agreement was signed and was submitted as documentary evidence prior to the hearing. The tenancy agreement states a monthly rent in the amount of \$1,500.00 due on the first of the month and a security deposit in the amount of \$750.00.

The Landlord submitted that on April 2, 2018, they received two cheques from the Tenant, one for the security deposit in the amount of \$750.00 and one for April 2018 rent in the amount of \$1,500.00. They provided the keys to the rental unit to the Tenant after receiving these cheques, and the Tenant moved in the same day. The Landlord testified that they received notice from their bank shortly after depositing the cheques that the cheques had been returned due to non-sufficient funds.

On April 14, 2018 the Landlord signed and served a 10 Day Notice by posting the notice on the Tenant's door. They submitted a text message exchange in evidence where they texted the Tenant a photo of the notice on the door and the Tenant replied. The Tenant applied to dispute the 10 Day Notice on April 21, 2018.

The Landlord testified that they received a payment of \$500.00 from the Tenant on April 13, 2018 and a payment of \$250.00 on April 29, 2018. The Landlord testified that these are the only payments they have received from the Tenant since the tenancy started and that rent for April and May 2018 is still outstanding.

Analysis

As the Landlord submitted the 10 Day Notice as evidence, I have reviewed the notice and determined that it was written in accordance with Section 52 of the *Act*. Pursuant to Section 55 of the *Act*, when a notice complies with Section 52 and when a Tenant's application to dispute a notice is dismissed, an Order of Possession must be granted. As such, an Order of Possession will be granted to the Landlord, effective two (2) days after service on the Tenant.

The Landlord submitted undisputed evidence and testimony that they have received payments totally \$750.00 from the Tenant since the outset of the tenancy on April 2, 2018. As this amount totals the security deposit that was to be paid at the start of the tenancy, I find that the Landlord is in possession of the \$750.00 security deposit and that rent remains outstanding for the months of April and May 2018.

I accept the Landlord's undisputed testimony that they have not received monthly rent in the amount of \$1,500.00 for April and May 2018, for a total amount owing of \$3,000.00. As the Landlord is in possession of the \$750.00 security deposit, I order that this be kept in partial satisfaction of the total amount of rent owing.

As the Landlord was successful in their application, I also find that they are entitled to the return of the filing fee paid for this application in the amount of \$100.00. A Monetary Order will be issued to the Landlord in the amount outlined below.

Monetary Order Calculations

April 2018 rent	\$1,500.00
May 2018 rent	\$1,500.00
Recovery of filing fee	\$100.00
Less Security deposit	(\$750.00)
Total owing to Landlord	\$2,350.00

Conclusion

The Tenant's application is dismissed without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is ordered to retain the full security deposit in the amount of \$750.00 in partial satisfaction of the money owed.

Pursuant to Sections 67 and 72 of the *Act*, I grant the landlord a **Monetary Order** in the amount of **\$2,350.00** for rent owed for April and May 2018, as well as the recovery of the filing fee paid for their application. The landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant 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: May 22, 2018

Residential Tenancy Branch