



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, CNR, LRE, OLC

Introduction

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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- 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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the landlords served the tenants with the notice of hearing package and the submitted documentary evidence in person on June 15, 2018. Both parties confirmed that the tenants served the landlord with the notice of hearing package and submitted documentary evidence via Canada Post Registered Mail on May 28, 2018. The landlords disputed that they served with documentary evidence by the tenants. A review of the Residential Tenancy Branch shows that no documentary evidence was uploaded by the tenants. The tenants provided a Canada Post Tracking

number as confirmation of the notice of hearing package and the submitted documentary evidence. I find on a balance of probabilities that both parties have been sufficiently served with the notice of hearing package(s) and the landlords' submitted documentary evidence as per section 90 of the Act. As for the tenants' documentary evidence, I find based upon the direct testimony of both parties that no documentary evidence was uploaded to the Residential Tenancy Branch and the landlord was not served. The hearing shall proceed in absence of the tenants' documentary evidence.

Preliminary Issue(s)

During the hearing it was clarified with both parties that the tenants' application to suspend or set conditions on the landlord's right to enter the rental unit (LRE) and the tenants' request for the landlord to comply with the Act, regulations or tenancy agreement were unrelated to the 10 Day Notice. Pursuant to Rule 2.3, I find that these portions of the tenants application be dismissed with leave to reapply as they are unrelated. Leave to reapply is not an extension of any applicable limitation period.

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 unpaid rent and recovery of the filing fee?

Are the tenants entitled to an order cancelling the 10 Day Notice?

Are the tenants entitled to 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 tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties agreed that there is no signed tenancy agreement. Both parties agreed that this was a month-to-month tenancy in which the monthly rent of \$1,200.00 was payable on the 15th day of each month. Both parties agreed that a \$600.00 security deposit was paid.

The landlords claim that the tenancy began on April 15, 2018. The tenants argue that the tenancy did not begin until April 30, 2018.

Both parties confirmed that the landlords served the tenants with a 10 Day Notice dated June 5, 2018. The 10 Day Notice states that the tenants failed to pay rent of \$1,200.00 that was due on May 15, 2018 and sets out an effective end of tenancy date of June 5, 2018.

The landlords clarified that the tenants were served with the 10 Day Notice in person on May 25, 2018. The tenants argued that the 10 Day Notice was not served until May 24, 2018. The landlords were unable to provide any proof of service.

The landlord seeks an order of possession and a clarified monetary order for unpaid rent of \$3,600.00 which consists of:

\$1,200.00	Unpaid Rent, May 2018
\$1,200.00	Unpaid Rent, June 2018
\$1,200.00	Unpaid Rent, July 2018

The landlords clarified that monthly rent is due on the 15th day of each month and that since the tenants were served with the 10 Day Notice dated June 5, 2018 on May 25, 2018, the tenants have paid no rent as of the date of this hearing. The tenants dispute the landlords' claims stating that rent has been paid in cash for which no receipts were issued. The tenants were not able to provide sufficient details of proof for rent payments.

The tenants seek an order cancelling the 10 Day Notice dated June 5, 2018.

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.

Both parties confirmed that the landlords served the tenants with the 10 Day Notice dated June 5, 2018. The landlord claims it was served on May 25, 2018 and the tenant claims that it was served on May 24, 2018. In this case, I accept the evidence of the tenant over that of the landlord as the landlord has not provided any proof of service. The tenants are deemed served on May 24, 2018.

On the issue of unpaid rent, I find that I prefer the evidence of the landlords over that of the tenants. The tenants claim that rent was paid in cash, but have provided insufficient evidence of the details for payment of rent.

As such, I find that the landlord has established a claim for the service of the 10 Day Notice and the unpaid rent of \$3,600.00 for the 3 month period (May, June and July 2018). The 10 Day Notice dated June 5, 2018 and served on May 24, 2018 is upheld. The tenants' application is dismissed. The landlords are granted an order of possession for unpaid rent to be effective 2 days after it is served upon the tenants.

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

Conclusion

The tenants' application is dismissed.

The landlords are granted an order of possession and a monetary order for unpaid rent for \$3,700.00.

These orders must be served upon the tenants. Should the tenants fail to comply with the orders, the orders may be filed in the Supreme Court 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: July 17, 2018

Residential Tenancy Branch