



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR, MNRL, FFL
For the tenants: CNL, CNR, OLC, ERP, LRE, LAT

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 16, 2018 (“10 Day Notice”), to cancel a 4 Month Notice for Landlord’s Use of Property which was actually a 2 Month Notice and not a 4 Month Notice (“2 Month Notice”), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, to suspend or set conditions on the landlord’s right to enter the rental unit, for emergency repairs for health or safety reasons, and for authorization to change the locks to the rental unit.

The landlord and an agent for the landlord (“agent”) attended the teleconference hearing. The tenants did not attend the hearing although the tenants were provided with a copy of the Notice of Dispute Resolution Hearing (“Notice of Hearing”) dated May 30, 2018 after the tenants filed their application on May 23, 2018. After the mandatory ten minute waiting period, the tenants’ application was **dismissed in full without leave to reapply** as the tenants failed to call into the teleconference to present the merits of their application and the landlord did call into the hearing and was prepared to proceed. I find the teleconference codes, date and time provided to both parties to be accurate and confirm that the only persons to call into the hearing were myself, the landlord and the agent for the landlord who called in with the same phone number which left only three parties on the line for the entire hearing according to the teleconference system which I monitored throughout the hearing which lasted 19 minutes. None of the three parties on

the line were the tenants. Based on the above, I find the 10 Day Notice to be undisputed as the tenants did not attend the teleconference and the tenants' application was dismissed without leave to reapply as a result.

The hearing process was explained to the landlord and agent, and the landlord and agent were given an opportunity was given to ask questions about the hearing process. Thereafter the landlord and agent gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

The agent affirmed that the tenants were served with their application, Notice of Hearing and documentary evidence by registered mail. Two registered mail tracking numbers were submitted in evidence; comprised of one for each tenant and of which both tracking numbers have been included on the cover page of this decision for ease of reference. According to the online Canada Post registered mail tracking website information, both packages were mailed on June 4, 2018 and signed for and accepted on June 7, 2018. As a result, I find that both packages were served as of June 7, 2018 the date they were signed for and accepted by registered mail. Based on the above, I am satisfied that the tenants were sufficiently served as required by the *Act*, and that the landlord's application is unopposed by the tenants as the tenants were served and did not attend the hearing to dispute the landlord's application or present the merits of their own application.

Preliminary and Procedural Matter

The landlord's email address was confirmed at the outset of the hearing. The tenants had provided their email address on their application and as a result, the decision will be emailed to the parties and the landlord will be provided with any applicable orders by email.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The agent confirmed that a written tenancy agreement did not exist between the parties and that the tenancy was based on a verbal agreement. The landlord and agent confirmed that a month to month tenancy began on July 1, 2016 and that monthly rent of \$700.00 was due on the first day of each month. The landlord affirmed that the tenants did not pay a security deposit or pet damage deposit during the tenancy.

A copy of the 10 Day Notice was submitted in evidence and is dated May 16, 2018. The landlord stated that the 10 Day Notice was posted to the tenants' door on May 16, 2018. The amount owing indicates \$3,500.00 due as of May 1, 2018 and the landlord stated that since that date, the tenants have failed to pay \$700.00 for each of the following months including June and July of 2018 and currently owes \$4,900.00 in unpaid rent and loss of rent. The landlord has applied for \$4,900.00 in unpaid rent and loss of rent and is seeking an order of possession as the tenants continue to occupy the rental unit. The effective vacancy date listed on the 10 Day Notice was May 26, 2018.

The agent affirmed that while a 2 Month Notice was issued dated March 9, 2018 with an effective vacancy date of May 10, 2018 which would automatically correct to May 31, 2018 under section 53 of the *Act*, that the tenancy should end based on the undisputed 10 Day Notice as the effective date of the 10 Day Notice corrects to May 29, 2018.

Analysis

Based on the undisputed testimony of the landlord and agent and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, I find the tenants failed to dispute the 10 Day Notice by failing to attend this hearing. Therefore, pursuant to section 46 of the *Act* I find the tenants are conclusively presumed under the *Act* to have accepted the effective vacancy date of May 26, 2018 which automatically corrects to May 29, 2018 under section 53 of the *Act* as the 10 Day Notice was posted to the door and is deemed served three days later in accordance with section 90 of the *Act*.

Section 55 of the *Act* applies and states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[My emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, and that I accept that no rent has been paid by the tenants for the months of January to July 2018 inclusive I grant the landlord an order of possession effective **two (2) days** after service on the tenants as the tenants continue to occupy the rental unit.

I agree with the agent that the tenancy did not end based on the 2 Month Notice and that the 2 Month Notice is of no force or effect as a result. I find the tenancy ended based on the undisputed 10 Day Notice which had an earlier effective vacancy date of May 29, 2018. I find the tenancy ended on May 29, 2018 and that the tenants have been over-holding the rental unit since that date.

Unpaid rent and loss of rent – Based on the above, I find the tenants have breached section 26 of the *Act* which states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[My emphasis added]

I accept the landlord's undisputed testimony that the tenants owes a total of **\$4,900.00** in unpaid rent and loss of rent as claimed for January to July 2018, which is seven months at \$700.00 per month. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find the landlord has established a total monetary claim of **\$5,000.00** comprised of \$4,900.00 in rent arrears, plus the recovery of the cost of the \$100.00 filing fee. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of **\$5,000.00**.

Conclusion

The tenants' application is dismissed, without leave to reapply, as indicated above.

The landlord's application is successful. The tenancy ended on May 29, 2018.

The landlord has been granted an order of possession effective two (2) days after service on the tenants. The landlord must serve the tenants with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$5,000.00 as described above. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the amount owing by the tenants to the landlord in the amount of \$5,000.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 18, 2018

Residential Tenancy Branch