



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties 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 submitted that the tenants were served separate notice of dispute resolution packages by registered mail on June 8, 2018. The landlord's lawyer provided the Canada Post Tracking Numbers to confirm these registered mailings. The tenants confirmed receipt of the dispute resolution packages on June 14, 2018. I find that the tenants were served with these packages on June 14, 2018, in accordance with section 89 of the *Act*.

Preliminary Issue- Service of Evidence

Section 3.15 of the Rules of Procedure (the "*Rules*") states that the respondent, must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. The respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The tenants testified that they did not serve their evidence package on the landlord or the landlord's legal counsel. I find that the tenants breached section 3.15 of the *Rules*. Pursuant to section 3 of the *Rules*, I refuse to consider the tenants' evidence.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and the landlord's lawyer's claims and my findings are set out below.

Both parties agreed that monthly rent in the amount of \$650.00 is payable on the first day of each month.

The tenants testified that they paid a security deposit of \$400.00. The landlord's lawyer submitted that this tenancy pre-dated the landlord's ownership of the property and that the landlord does not have any information about whether or not a security deposit was paid.

The landlord testified that the tenant did not pay rent on May 1, 2018 when it was due. On May 10, 2018 the landlord served a 10 Day Notice to End Tenancy for unpaid rent with an effective date of May 31, 2018 (the "10 Day Notice") on the tenants via registered mail. The landlord provided the Canada Post Tracking Number to confirm this registered mailing. The Canada Post tracking website indicated that tenant J.J. signed for this package on May 16, 2018.

Tenant J.J. testified that she picked up a package on May 16, 2018 but was not sure what documents were in the package. During the hearing, the tenants were unable to locate the 10 Day Notice.

The landlord's lawyer submitted that the tenants have not paid rent from March 2018 to the present date except for three cheques, each in the amount of \$325.00, which were all received by the landlord on June 29, 2018. The three cheques in question were submitted into evidence: two of the cheques were dated June 21, 2018 and the other was dated June 27, 2018.

The tenants testified that they thought they had paid March and April 2018's rent. The tenants testified that for May, June and July's 2018's rent, three cheques in the amount of \$325.00 each, were sent to the landlord but the tenants did not know on what dates they were sent.

The tenants testified that they did not file to dispute the 10 Day Notice as they thought the evidence they submitted to the Residential Tenancy Branch in response to the landlord's application was sufficient.

The landlord's lawyer requested that the landlord's application for dispute resolution be amended to include a monetary claim for unpaid rent from March to July 2018 in the amount of \$2,275.00

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenants by sending a copy by registered mail. I accept the landlord's lawyer's evidence that the 10 Day Notice was sent to the tenants by registered mail on May 10, 2018. While the tenants were unable to locate the 10 Day Notice during the hearing, I am satisfied based on their own testimony and the tracking information provided by the landlord's lawyer, that service of the 10 Day Notice was effected on the tenants on May 16, 2018.

Based on the evidence of both parties and the copies of rent cheques provided by the landlord, I find that the landlord received the three rent cheques on June 29, 2018.

The tenants failed to pay the May 2018 rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by May 31, 2018, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Policy Guideline 23, section E states that a request to amend an Application for Dispute Resolution should not be granted when the amendment results in prejudice to a party. In this case, I find that to amend the landlord's application to include an application for a Monetary Order for unpaid rent prejudices the tenants as they did not have an opportunity to present evidence regarding rent paid from March 1, 2018 to present. I decline to amend the current Application for Dispute Resolution; however, the landlord remains permitted to file a separate Application for Dispute Resolution for unpaid rent.

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

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I find that the landlord is entitled to retain \$100.00 from the tenants' security deposit.

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 24, 2018

Residential Tenancy Branch