



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT
 OPR, MNRL, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”). The matter was set for a conference call.

The Tenants’ Application for Dispute Resolution was made on June 11, 2018. The Tenants applied to cancel a 10-Day Notice for Unpaid Rent and the return of their filing fee. The Landlord Application for Dispute Resolution was made on June 22, 2018. The Landlord applied for an order for possession, a monetary order for unpaid rent and to recover her filing fee.

The Landlord attended the hearing. The Landlord was affirmed to be truthful in her testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that she served the Tenants with the Notice of Hearing documents by Canada Post Registered mail, sent on June 23, 2018, a Canada post tracking number was provided as evidence of service. I find that the Tenants have been duly served with the Notice of Hearing in accordance with the *Act*. I also note that the Tenants were also applicants to these proceedings, and there have been duly informed of the date and time of this hearing.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all the evidence and testimony 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.

Issues to be Decided

- Should the Landlord's 10-Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- If not, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a monetary order pursuant to section 46 of the *Act*?
- Are the Tenants entitled to the return of their filing fee?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2017. Rent in the amount of \$750.00 is to be paid by the first day of each month. The Landlord testified that she does not hold a security deposit for this tenancy.

The Landlord testified that she served the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) to the Tenants on June 4, 2018, by posting it to the front door of the rental unit. The Landlord also testified that the Tenants have not paid the outstanding amount of rent despite their application to dispute the Notice and that they have not paid rent for July 2018. The landlord requested the Order of Possession and a monetary order for the outstanding rent of \$4,250.00

A signed copy of the Notice was submitted into documentary evidence by the Landlord; the Notice indicated that \$3,500.00 in rent was outstanding, from Feb to June 2018, at the time the Notice was served, and had an effective date of June 17, 2018, to end the tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenants received the 10-Day notice on June 7, 2018, and did apply to dispute the Notice within the legislated timeline. This matter was set for hearing by telephone conference call at 11:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during was the Landlord.

Rule 7.1 and 7.3 of the Rules of Procedure provides as follows:

7.1 The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 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.

Therefore, as the Tenants did not attend the hearing by 11:11 a.m., I dismiss the Tenants' application without leave to reapply.

Section 55(1) of the Act 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.

I have reviewed the Notice to end tenancy; I find the Notice to end tenancy complies with section 52 of the *Act*. As I have dismissed the Tenants' application, pursuant to section 55 of the *Act*, I must grant the Landlord an order of possession to the rental unit.

Therefore, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

Additionally, I find that the Landlord has established an entitlement to a monetary award for unpaid rent. I grant the Landlord a monetary order in the amount of \$4,250.00, consisting of the unpaid rent for February, March, April, May, June and July 2018.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

<u>Rent</u>	<u>Outstanding</u>
Feb-18	\$500.00
Mar-18	\$750.00
Apr-18	\$750.00
May-18	\$750.00
Jun-18	\$750.00
Jul-18	\$750.00
Total Outstanding Rent	\$4,250.00
Filing Fee	\$100.00
	\$4,350.00
Security Deposit Held	\$0.00
	\$4,350.00

Conclusion

The Tenants' application is dismissed, without leave to reapply.

I grant an Order of Possession to the Landlord effective **two days** after service on the Tenants. The Tenants must be served with this Order. 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 grant the Landlord a **Monetary Order** in the amount of **\$4,350.00** for the outstanding rent and the recovery of the filing fee for this application. The Landlord is provided with this Order in the above terms, and 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.

This decision is made on the authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 31, 2018

Residential Tenancy Branch