



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 MNRL, FFL, OPRM-DR

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to an Application for Dispute Resolution (the “Amendment”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), a Monetary Order for unpaid rent and utilities, and recovery of the filing fee.

This hearing also dealt with a cross-application filed by the Tenants under the *Residential Tenancy Act* (the “Act”), seeking cancellation of the 10 Day Notice.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenants did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of these documents as outlined below.

The Agent testified that the Application and the Notice of Hearing were sent to each of the Tenants individually, by registered mail, on August 20, 2018. In support of this testimony the Agent provided copies of the registered mail receipt, the envelope address stickers, and tracking reports from Canada Post showing that the registered

mail was sent as described above and that both packages were received and signed for on August 21, 2018.

The Agent testified that the Amendment was subsequently sent to each of the Tenants individually, by registered mail, on September 7, 2018. In support of this testimony the Agent provided copies of the registered mail receipt, the envelope address stickers, and tracking reports from Canada Post showing that the registered mail was sent as described above and that both packages were received and signed for on September 10, 2018.

As a result of the above, I find that the Tenants were served the Application and the Notice of hearing on August 21, 2018, and the Amendment on September 10, 2018, by registered mail. In any event, I find that the Tenants were well aware of the date and time of the hearing as their own Application was set to be heard before me at the same date and time.

I have reviewed all evidence and testimony before me that was accepted for consideration in the hearing in accordance with the Rules of Procedure; However, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be e-mailed to them at the e-mail address confirmed in the hearing.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the 10 Day Notice?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to compensation for unpaid rent and utilities?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on August 1, 2015, that rent in the amount of \$1,800.00 is due

on the first day of each month, and that a \$900.00 security deposit was paid by the Tenants, which the Agent confirms the Landlord still holds.

The Agent testified that the payment of rent has been an ongoing issue and that they received a previous Monetary Order from the Residential Tenancy Branch (the "Branch") in July which the Tenants have still not paid. The Landlord stated that when the Tenants did not pay the \$1,800.00 in rent as required on August 1, 2018, a 10 Day Notice was served.

The 10 Day Notice in the documentary evidence before me, dated August 2, 2018, has an effective date of August 12, 2018, and states that rent in the amount of \$1,800.00 was due on August 1, 2018. The 10 Day Notice also states that it was posted to the door of the rental unit on August 2, 2018, and the Agent provided a witnessed and signed Proof of Service document indicating that the 10 Day Notice was served as described above.

The Agent testified that since the service of the 10 Day Notice, the Tenants have not paid the \$1,800.00 owed for August and that despite the fact that they remain in possession of the rental unit, they have not paid rent for September or October either. As a result, the Landlord is seeking \$5,400.00 in outstanding rent for August, September, and October of 2018.

The Agent also stated that the tenancy agreement clearly indicates that utilities are not included and that the Tenants have not paid the \$348.55 water bill, a copy of which was served on them on July 22, 2018, along with a demand letter requesting payment within 30 days. As a result, the Landlord is also seeking \$348.55 for the water bill. The Agent stated that as the Landlord still holds the \$900.00 security deposit, the Landlord would like authorization to withhold this deposit against the amounts owed to them by the Tenants and receive a Monetary Order for the balance owed.

The Tenants did not appear at the hearing to provide any evidence or testimony for my consideration.

Analysis

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Agent and I attended the hearing on

time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on October 1, 2018. Rule 7.3 of the Rules of Procedure states that 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 reapply. Although the Agent and I were on the line until 9:46 A.M., neither the Tenants nor an agent acting on their behalf attended the hearing to provide any evidence or testimony for my consideration. As a result, and pursuant to rule 7.3 of the Rules of Procedure, I dismiss the Tenants Application seeking cancellation of the 10 Day Notice without leave to reapply.

As the 10 Day Notice in the documentary evidence before me is signed and dated by the Landlord, gives the address for the rental unit and the reason for ending the tenancy, states the effective date of the notice and is in the approved form, I find that the 10 Day Notice complies with section 52 of the *Act*. Based on the above, the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*. The effective date of the 10 Day Notice has passed and the Agent testified that the Tenants have not paid rent for August, September or October. As it is now October 1, 2018, I therefore order that the Order of Possession will be effective two days after service on the Tenants.

I also accept the Agents undisputed testimony that rent has not been paid for August, September, and October of 2018, and that \$348.55 is owed for water usage. Despite the foregoing, I find that the Landlord's Application seeking October rent is premature as the date of today's hearing is October 1, 2018, and the tenancy agreement states that rent is due on the first day of the month. As a result, I find that the Tenants have until midnight to pay rent for October. As a result, I dismiss the Landlord's claim for October rent with leave to reapply, should the Tenants fail to pay rent for October or overhold the rental unit.

Based on the above, I therefore find that the Landlord is entitled to \$3,948.55 in outstanding rent and utilities. I also find that the Landlord is entitled to recovery of the filing fee and to retain, in full, the \$900.00 security deposit paid by the Tenants, pursuant to section 72 of the *Act*. As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$3,148.55; \$3,948.55, plus \$100.00 for recovery of the filing fee, less the \$900.00 security deposit retained by the Landlord.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,148.55. 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 authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 1, 2018

Residential Tenancy Branch