



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	MNR OPR FF
	Tenant:	CNR OLC FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords’ Application for Dispute Resolution was made on August 21, 2018 (the “Landlords’ Application”). The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on August 14, 2018 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order that the Landlords comply with the *Act*, regulations, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Landlords attended the hearing at the appointed date and time, and provided affirmed testimony. The Tenants did not attend the hearing. Accordingly, the Tenants’ Application is dismissed, without leave to reapply. It has not been considered further in this Decision.

On behalf of the Landlords, E.P. testified the Landlords' Application package was served on the Tenants by registered mail on August 21, 2018. A Canada Post registered mail receipt was submitted in support. Pursuant to sections 89 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenants are deemed to have received the Landlords' Application package on August 26, 2018.

The Landlords were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Are the Landlords entitled to a monetary order for unpaid rent or utilities?
2. Are the Landlords entitled to an order of possession?
3. Are the Landlords entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It indicated the fixed-term tenancy agreement began on June 1, 2018, and was expected to continue to May 31, 2019. Rent in the amount of \$2,000.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00, which the Landlords hold.

On behalf of the Landlords, E.P. testified the Tenants did not pay rent when due on August 1, 2018. Accordingly, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 10, 2018 (the "10 Day Notice"), which was served on the Tenants by leaving a copy attached to the door of the rental unit on that date. The Tenants' Application confirmed receipt of the 10 Day Notice on August 10, 2018. At that time, rent in the amount of \$2,000.00 was outstanding. Copies of the 10 Day Notice, a Proof of Service document, and a photograph depicting the 10 Day Notice attached to the door of the rental unit were submitted into evidence.

E.P. testified that the Tenants made a partial rent payment of \$1,250.00 in August 2018 but that rent was not paid when due on September 1 and October 1, 2018. Currently, rent in the amount of \$4,750.00 is outstanding (\$750.00 + \$2,000.00 + \$2,000.00).

The Landlords also sought to recover the filing fee paid to make the Application.

The Tenants did not attend the hearing to dispute the Landlords' evidence.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Further, section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or dispute the notice by making an application for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenants received the 10 Day Notice on August 10, 2018. Accordingly, pursuant to section 46 of the *Act*, the Tenants had until August 15, 2018, to dispute the 10 Day Notice by making an application for dispute resolution or pay rent in full. Although the Tenants made a partial payment of \$1,250.00, I find that overdue rent has not been paid and that rent in the amount of \$4,750.00 remains outstanding. Accordingly, I find the Landlords have demonstrated an entitlement to a monetary award of \$4,750.00 for unpaid rent.

As rent has not been paid when due, I find further that the Landlords are entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

Having been successful, I find the Landlords are entitled to a monetary award in the amount of \$100.00 in recovery of the filing fee. I also find it is appropriate in the circumstances to order that the security and pet damage deposits held be applied to the amount due to the Landlord.

Pursuant to section 67 of the *Act*, I grant the Landlords a monetary order in the amount of \$2,850.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,750.00
Filing fee:	\$100.00
<i>LESS</i> security and pet damage deposits:	(\$2,000.00)
TOTAL:	\$2,850.00

Conclusion

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

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$2,850.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 5, 2018

Residential Tenancy Branch