



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “*Act*”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent (the 10-Day Notice) issued on August 6, 2018, a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by registered mail on August 28, 2018, two Canada post tracking numbers were provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants had been duly served in accordance with the *Act*.

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

I have reviewed all oral and written 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.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the Act?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that the tenancy began on August 1, 2017, as a month to month tenancy; rent in the amount of \$2,500.00 is to be paid by the first day of each month and that the Tenants had paid a \$1,250.00 security deposit at the outset of this tenancy.

The Landlord testified that he served the Tenants with a Two-Month Notice to End Tenancy for the Landlord's Use of the Property (the "Two-Month Notice") on April 22, 2018. The Two-Month Notice informed the Tenants of the right to dispute the Two-Month Notice within 15 days after receiving it. The Two-Month Notice also informed the Tenants that if an application to dispute the Two-Month Notice was not made within 15 days, the Tenants would be presumed to have accepted the Two-Month and must move out of the rental unit on the date set out on page one of the Notice. The Two-Month Notice had an effective date of June 30, 2018. The reason checked off by the Landlord within the Notice was as follows:

- the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlord testified that the Tenants had not moved out in accordance with the Two-Month Notice, as they were stilling for a new place to live and that he did not have an issue with giving them more time to find a new place.

The Landlord testified that he served the Tenants with a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice") on August 6, 2018, by attaching it to the Tenants' door, with an effective date of August 16, 2018. The Notice informed the Tenants of the right to dispute the 10-Day Notice or pay the outstanding rent within five days after receiving it. The 10-Day Notice also informed the Tenants that if an application to dispute the 10-Day Notice or payment of the outstanding rent in full was not made within five days, the Tenants would be presumed to have accepted the 10-

Day Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenants have not paid the outstanding rent for August as indicated in the 10-Day Notice. The Landlord also testified that the Tenants had not paid the rent for the subsequent months of September and October 2018 and have not moved out of the rental unit. The Landlord testified that the Tenants had not served him with notification that they had filed an application to dispute the 10-Day Notice or the Two-Month Notice.

The Landlord is seeking an order of possession and a monetary order for the outstanding rent.

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).

I find that the Tenants were deemed to have received the 10-Day Notice on August 9, 2018. I also find that the Tenants have not paid the rent or disputed the Notice and are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the Act states that a landlord is entitled to request an order of possession when a tenant has not disputed the Notice.

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. The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award of \$7,500.00 for loss of three months rent, for August, September and October 2018. The Landlord is authorized to retain the Tenants' security deposit as partial satisfaction of this award.

However, I also accept the testimony of the Landlord that he served a Two-Month Notice to end the tenancy pursuant to section 49 of the *Act* on April 22, 2018. Section 51 of the *Act* states that any tenant who receives a Notice pursuant to section 49 of the *Act* is entitled to receive an amount that is the equivalent of one month's rent payable under the tenancy agreement as compensation.

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

I accept the testimony of Landlord that the one month's rent compensation due to the Tenants has not been paid as of the date of this hearing. I find that the Tenants are entitled to one month's rent compensation, pursuant to section 51 of the *Act*. Therefore, I will reduce the Landlord's award by the amount of \$2,500.00, the equivalent of one month's rent due to the Tenants under the Two-Month Notice.

As the Landlord has been successful in this application, I also find that the Landlord is entitled to recover their \$100.00 filing fee for this hearing.

I grant the Landlord a monetary order in the amount of \$850.00; consisting of \$7,500.00 in unpaid rent, \$100.00 for the recovery of the filing fee for this hearing, less the security deposit of \$1,250.00 that the Landlord is holding and less the \$2,500.000 due to the Tenants under the Two-Month Notice issued by the Landlord.

Conclusion

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 **\$850.00**. 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 11, 2018

Residential Tenancy Branch