



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL; CNR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenants' cross-application pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 14, 2018 ("10 Day Notice"), pursuant to section 46.

The two tenants did not attend this hearing, which lasted approximately 17 minutes. The two landlords, "landlord GL" and landlord ML ("landlord") 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 confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both landlords were duly served with the tenants' application.

The landlord testified that the tenants were each served separately with the landlords' application for dispute resolution hearing package by way of registered mail to the rental unit on August 31, 2018. When I asked what documents were served, the landlord did not know, claiming that she served whatever documents she received back from the Residential Tenancy Branch after the landlords applied. The landlord provided two Canada Post tracking numbers verbally during the hearing.

When I checked both tracking numbers on the Canada Post website, they indicated the following statement on both mail packages on September 20, 2018, just five days before this hearing date: "Item cannot be delivered as addressed; sent to the Undeliverable Mail Office." The landlord stated that she did not know what that meant and thought both packages were delivered because she did not receive any back as returned to sender.

I notified the landlord that because of the above Canada Post statement and the fact that she did not know what documents were served to the tenants, I could not consider the landlords' application for a monetary order for unpaid rent and it was dismissed with leave to reapply.

The landlord testified that the tenants were served with the landlords' 10 Day Notice on August 14, 2018 by way of posting to their rental unit door. The notice indicates an effective move-out date of August 24, 2018. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlords' 10 Day Notice on August 17, 2018, three days after its posting. The tenants applied to dispute this same notice in their application.

Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: 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.

In the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Should the landlords' 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on June 15, 2018. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,100.00 and a pet damage deposit of \$400.00 was due but not paid by the tenants. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice for unpaid rent of \$2,200.00 due on August 1, 2018. There is a notation beside the August rent due, indicating that \$1,100.00 was outstanding for the security deposit. The landlord testified that the tenants made a \$500.00 payment towards the August 2018 rent on August 23, 2018, leaving a balance of \$1,700.00. She said that the tenants also failed to pay \$2,200.00 for September 2018 rent.

The landlords seek an order of possession based on the 10 Day Notice.

Analysis

According to subsection 46(4) of the *Act*, tenants may dispute a 10 Day Notice by making an application for dispute resolution within five days after the date the tenants were deemed to have received the notice, August 17, 2018. The tenants filed their application to dispute it on August 24, 2018. Therefore, they were not within the five day time limit to dispute the 10 Day Notice. The tenants did not apply for more time to make their application to dispute the notice.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement, which in this case required the tenants to pay by the first day of each month.

On a balance of probabilities and for the reasons stated below, I accept the landlords' undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due of \$2,200.00 on August 1, 2018, within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenants to pay the full rent within five days or to apply to cancel the notice within five days or to appear at this hearing to pursue their application, led to the end of this tenancy on August 27, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by August 27, 2018.

Section 55(1) of the *Act* reads as follows:

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.

As noted above, I dismissed the tenants' application. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*. Accordingly, I find that the landlords are entitled to an Order of Possession effective two (2) days after service on the tenants.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant(s). Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlords' application for a monetary order for unpaid rent is dismissed with leave to reapply.

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply, as the landlords were unable to pursue their application because of failure to serve their application properly to the tenants.

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: September 25, 2018

Residential Tenancy Branch