



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: CNR, LRE, MT, RP Landlord: MNRL, OPR, FFL

Introduction

On July 17, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) and requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee.

On July 19, 2018, the Tenants submitted an Application for Dispute Resolution under the Act and requested to cancel a 10-day Notice to End Tenancy for Unpaid Rent, restrict the Landlord’s right to enter, for more time to apply for dispute resolution and an order for repairs. The Tenants’ Application was crossed with the Landlord’s Application and the matter was set for a participatory hearing via conference call.

The Landlord and her Advocate attended the conference call hearing; however, the Tenants did not attend at any time during the 33-minute hearing. The Landlord testified that the Tenants were served with the Notice of Hearing by having a copy hand delivered to the Tenants at the rental unit on July 18, 2018. As a result of this and the fact that the Residential Tenancy Branch provided the same hearing information to the Tenants on July 24, 2018, I find that the Tenants have been duly served with the Notice of Hearing in accordance with Section 89 the Act.

The Landlord was provided the opportunity to present her affirmed testimony and documentary evidence 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.

Preliminary Matters

Rule 7.1 of the *Residential Tenancy Branch - Rules of Procedure* stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the Application, with or without leave to re-apply.

This hearing was scheduled to commence at 11:00 a.m. on September 7, 2018. The Landlord and I dialed into the teleconference; however, the Tenant failed to attend. I confirmed that the correct call-in numbers and participant codes had been provided in the Tenants' Notice of Hearing. As such, I find that the Tenants have abandoned their Application for Dispute Resolution and I dismiss their Application without leave to reapply. The hearing was conducted in the absence of the Tenants.

Issues to be Decided

Should the Landlord be issued an Order of Possession for the rental unit in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order to recover the unpaid rent in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed evidence:

The Landlord and the Tenants had a verbal tenancy agreement that started on November 15, 2017. The monthly rent was \$850.00, due on the first of each month. The Tenants paid their rent in cash for January, February and March 2018 and then stopped paying their rent. The Tenants have not paid rent since that time and are in arrears for April through to September 2018.

On July 4, 2018, the Landlord served a 10-Day Notice to End Tenancy for Unpaid Rent (the "Notice") to the Tenants by having it personally served to them. The Notice stated that the Tenants owed \$3,400.00 in unpaid rent as of July 1, 2018 and that if they failed to pay it or apply for Dispute Resolution, that they had to move out of the rental unit by July 13, 2018.

When the Tenants failed to move out of the rental unit, the Landlord applied for an Order of Possession and also requested a Monetary Order for all unpaid rent since April 1, 2018.

Analysis

Based on undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$850.00 by the first day of each month and that the Tenants have not paid rent from April 1, 2018 through to September 7, 2018. As the Tenants are required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$4,250.00 for 5 months of rent, plus \$198.31 for seven days in September 2018, for a total of \$4,448.31 in outstanding rent.

Section 46 of the Act authorizes a Landlord to 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. The Tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the Tenant does not pay the rent or make an Application for Dispute Resolution, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The Landlord testified that the Notice was personally served to the Tenants on July 4, 2018. I, therefore, find that the earliest effective vacate date of the Notice is July 14, 2018. I have no evidence before me that the Tenants paid their rent or applied for Dispute Resolution within 5 days of receiving the Notice; therefore, I find that the Tenants accepted that the tenancy has ended. For the above reasons and because the Tenants are still occupying the rental unit, I grant the Landlord an Order of Possession, in accordance with Section 55 of the Act.

The Landlord was successful with their Application and as such, is entitled to be reimbursed for the Filing Fee of \$100.00, in accordance with Section 72 of the Act.

The Landlord has established a monetary claim, in the amount of \$4,548.31, which includes \$4,448.31 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$4,548.31.

Conclusion

I dismiss the Tenants Application for Dispute Resolution without leave to reapply.

I am granting the Landlord an Order of Possession to be effective two days after notice is served on the Tenants. 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 am granting the Landlords a Monetary Order for \$4,548.31, in accordance with Section 67 of the Act. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: September 07, 2018

Residential Tenancy Branch