



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied on August 10, 2018 for:

1. An Order cancelling a notice to end tenancy - Section 46.

The Landlord applied on September 7, 2018 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Tenant NB did not attend the hearing. Tenant TG and the Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

I accept the Landlord’s evidence that Tenant NB was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on September 13, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that Tenant NB is deemed to have received the Materials on September 18, 2018.

Preliminary Matter

Tenant TG states that she moved out of the unit on August 16, 2018 and did not agree to the application made by Tenant NB to dispute the notice to end tenancy. Tenant TG requested and the Landlord agreed to withdraw all claims against Tenant TG contained in the Landlord's application. Given the Landlord's agreement the monetary claims against Tenant TG are dismissed and any orders that may be granted as a result of the Landlord's successful claims in this hearing will be restricted to Tenant NB.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy, under written agreement, started on June 12, 2018. Rent of \$3,250.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,625.00 as a security deposit. The Tenants failed to pay rent for July and August 2018 and on August 8, 2018 the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice") by leaving the Notice in the mailbox. The Tenants' application indicates that the Notice was received by the Tenants on August 8, 2018. The Notice indicates that rent of \$6,500.00 was not paid. A copy of the Notice was provided as evidence for this hearing by the Tenants.

The rental arrears on the Notice have not been paid and no rents have been received by the Landlord for September or October 2018. The Landlord is not sure whether Tenant NB has vacated the unit as some furnishings are still in the unit and no key has been returned.

Analysis

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given the undisputed evidence that the rent indicated on the Notice was not paid and has not been paid since the Notice was issued I find that the Notice is valid and I dismiss the Tenants' application. Considering that the required form and content is contained on the Notice and given the dismissal of the Tenants' application I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Rent is payable until a tenancy ends. Based on the Landlord's evidence, I find that Tenant NB occupied the unit to at least September 30, 2018 and failed to pay rent as required under the tenancy agreement. The Landlord is therefore entitled to unpaid rent of **\$9,750.00**. As the some belongings are still in the unit and as no keys were returned but considering that the Landlord has now been granted an order of possession I find that the Landlord is entitled to unpaid rent of **\$1,572.60** for the period October 1 to 15, 2018 inclusive. I base this amount on a per diem amount of **\$104.84** x 15 days. I give the Landlord leave to reapply for any

overholding rent that may accrue past October 15, 2018 or until the Landlord obtains possession of the unit. The Landlord remains at liberty to make any other claims for losses that were caused by the Tenants.

As the Landlord's application has been successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$11,422.60**. Deducting the security deposit of **\$1,625.00** plus zero interest leaves **\$9,797.60** owed by Tenant NB to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$1,625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$9,797.60**. If necessary, this order may be filed in the 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: October 01, 2018

Residential Tenancy Branch