



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPRM-DR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested an order of Possession and monetary compensation based on two notices to end tenancy: a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on July 10, 2018 (the "July Notice") and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 10, 2018 (the "August Notice") as well as recovery of the filing fee.

The Landlord originally applied by way of Direct Request Proceeding pursuant to section 55(4) of the *Residential Tenancy Act*. The Adjudicator considering that request adjourned the matter to a participatory hearing as they found insufficient evidence of service of the Notices as the Proof of Service was not signed by the witness.

The participatory hearing was scheduled for teleconference before me at 11:00 a.m. on October 18, 2018. Only the Landlord called into the hearing. As the Tenant failed to call into the hearing service of the Notice of Reconvened Hearing was considered.

The Landlord confirmed that he personally served the Tenants with Notice of the Reconvened Hearing on September 7, 2018. He also confirmed that he texted the Tenants prior to the hearing to remind them of the hearing at 11:00 a.m. He stated that on Monday October 15, 2018 he received a text message from the Tenant, D.P., in response and in which D.P. confirmed his knowledge of the hearing.

Based on the Landlord's undisputed testimony I accept that the Tenants were given notice of the hearing and I proceeded with the hearing in their absence.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and monetary compensation based on the Notices?
2. Should the Landlord recover the filing fee?

Background and Evidence

At the hearing before me the Landlord confirmed the contents of the following documentary evidence filed in support of his Direct Request Application and which was summarized by the Adjudicator in their Interim Decision as follows:

- A copy of a residential tenancy agreement which was signed by the landlord, Tenant D.D., and Tenant D.P., indicating a monthly rent of \$2,500.00, due on the first day of each month for a tenancy commencing on February 28, 2018;
- A copy of a Schedule of Parties form naming Tenant V.P.;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 July Day Notice) dated July 10, 2018, for \$2,500.00 in unpaid rent and \$660.00 in unpaid utilities. The July 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of July 20, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 July Day Notice was placed in the tenants' mailbox or mail slot at 10:00 am on July 10, 2018;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 August Day Notice) dated August 10, 2018, for \$2,500.00 in unpaid rent and \$660.00 in unpaid utilities. The August 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of August 20, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 August Day Notice was placed in the tenants' mailbox or mail slot at 8:00 pm on August 1, 2018; and

- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

At the hearing the Landlord testified that he personally served the July Notice and the August Notice by leaving them in the mailbox at the rental unit on July 10, 2018 and August 10, 2018 respectively.

The Landlord confirmed that the Tenants remain in occupation of the rental unit. With respect to his request for a Monetary Order, he testified as follows:

- the Tenants paid the August rent, although they failed to pay within five days as required by the *Act*;
- the September rent was paid in installments and not fully paid (although he could not provide the exact amount owing); and,
- no payment was received for the October 2018 rent.

The Landlord also confirmed that the Tenants failed to make an application for dispute resolution to dispute either the July Notice or the August Notice.

Analysis

Based on the Landlord's undisputed testimony and evidence before me and on a balance of probabilities I find as follows.

I accept the Landlord's affirmed testimony and find the Tenants were served with the July Notice on July 10, 2018 by placing the Notice in the Tenants' mailbox on that date; similarly, I find that the Tenants were served the August Notice on August 10, 2018 again by placing the Notice in the Tenants' mailbox on that date.

Section 90 of the *Residential Tenancy Act* provides that documents served in this manner are deemed served three days later; as such I find the Tenants were served with the July Notice on July 13, 2018 and the August Notice on August 13, 2018.

I accept the Landlord's testimony that the Tenants failed to pay rent or dispute either the July Notice or the August Notice within the five days required by section 46, which reads as follows:

Landlord's notice: non-payment of rent

46 (1) A landlord may 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.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In failing to do either, the Tenants are conclusively presumed pursuant to section 46(4) to accept the end of the tenancy. **I therefore grant the Landlord an Order of Possession pursuant to section 55 of the Act.**

I accept the Landlord's evidence that the Tenants failed to pay the July and August rent on the first day of the month as required by the tenancy agreement. I also accept his evidence that the September rent was not paid in full, despite various payments being made by the Tenants. As the Landlord was not able to provide the exact amount owing for September 2018, I dismiss, with leave to reapply, his request for related compensation. I accept his evidence that the Tenants failed to pay the October 2018 rent and as such award him the sum of \$2,500.00 for October's rent.

As the Landlord has been largely successful in his Application I also award him recovery of the \$100.00 filing fee for a total monetary award of **\$2,500.00**.

Conclusion

The Landlord's request for an Order of Possession pursuant to sections 46 and 55 of the *Act* is granted. The Landlord must serve the Order on the Tenants and may file and enforce the Order in the B.C. Supreme Court.

The Landlord is entitled to monetary compensation in the amount of \$2,600.00 for unpaid rent for October 2018 in the amount of \$2,500.00 as well as \$100.00 for the filing fee. Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenants' \$1,250.00 security deposit towards the amounts awarded and I grant him a Monetary Order in the amount of **\$1,350.00** for the balance due. This Order must also be served on the Tenants and is enforceable in the B.C. Provincial Court (Small Claims Division).

The Landlord's claim for monetary compensation for unpaid rent for September 2018 is dismissed with leave to reapply.

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 24, 2018

Residential Tenancy Branch