



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, MNDC-S, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on October 19, 2018. Both parties also confirmed that the tenants served the landlord with the notice of hearing package in person. The tenants did not submit any documentary evidence. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package(s) and the submitted documentary evidence as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to an order cancelling the 10 Day Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on June 29, 2018 on a fixed term tenancy ending on June 30, 2019 as shown by the submitted copy of the signed tenancy agreement dated June 11, 2018. The monthly rent is \$2,300.00 payable on the 1st day of each month. A security deposit of \$1,150.00 was paid on June 18, 2018.

The landlord seeks an order of possession and a clarified monetary order for unpaid rent of \$4,718.00 which consists of:

\$4,600.00	Unpaid Rent, \$2,300.00	October 2018
	\$2,300.00	November 2018
\$100.00	Recovery of Filing Fee	
\$9.00	Registered Mail Postage	
\$9.00	Registered Mail Postage	

The landlord claims that the tenants were served with a 10 Day Notice dated October 2, 2018 which states in part that the tenants failed to pay rent of \$2,300.00 that was due on October 1, 2018 in person on October 2, 2018. The landlord has submitted in support of this claim a proof of service document which confirms that the package was served via a courier service. The tenant confirmed receipt of the 10 Day Notice dated October 2, 2018 in person on October 2, 2018, which the tenant confirmed he signed in receipt of. The 10 Day Notice also sets out an effective end of tenancy date of October 12, 2018.

The tenants provided written details stating, "We are disputing this notice because we were unable to pay due to hardship, A. did not get her child tax benefit and K. got laid off work."

The tenants provided undisputed testimony that they did not pay the October 2018 rent of \$2,300.00 nor did they pay any rent since the 10 Day Notice dated October 2, 2018 was received.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenants provided undisputed evidence that they failed to pay the outstanding rent within five days of receiving the 10 Day Notice dated October 2, 2018 nor has the tenants made any rent payments since receiving the 10 Day Notice. As such, the landlord is entitled to an order of possession. As the effective date of the notice has now passed, I order that the tenants comply with the order of possession within 2 days of being served.

On this basis, I find that the landlords have established that the tenants have unpaid rent of \$4,600.00 as claimed for October and November 2018.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation cost(s) (Registered Mail Postage) are dismissed.

The landlords having been successful are entitled to recovery of the \$100.00 filing fee.

I also authorize the landlord to retain the \$1,150.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$3,550.00.

These orders must be served upon the tenants. Should the tenants fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as an order of those courts.

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: November 16, 2018

Residential Tenancy Branch