



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR MNRLS FFL
For the tenants: CNR RP

Introduction

This hearing was convened as a result of the cross-applications of the parties for dispute resolution (“applications”) seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to retain the tenants’ security deposit towards money owing, and to recover the cost of the filing fee. The tenants applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 29, 2018 (“10 Day Notice”), and for regular repairs to the unit, site or property.

The landlord and a landlord’s support person, RM, (“support person”) attended the teleconference hearing. The tenants did not attend the hearing although the tenants were provided with a copy of the Notice of Dispute Resolution Hearing (“Notice of Hearing”) dated December 4, 2018 when the tenants filed their application. After the mandatory ten minute waiting period, the tenants’ application was **dismissed in full without leave to reapply** as the tenants failed to call into the teleconference to present the merits of their application and the landlord did call into the hearing and were prepared to proceed. I find the teleconference codes, date and time provided to both parties to be accurate and confirm that the only persons to call into the hearing were myself, the landlord and the support person for the landlord who called in with the same phone number which left only two parties on the line for the entire hearing according the teleconference system which I monitored throughout the hearing which lasted 15 minutes. Based on the above, I find the 10 Day Notice to be undisputed as the tenants did not attend the teleconference and the tenants’ application was dismissed without leave to reapply as a result.

The hearing process was explained to the landlord, and the landlord was given an opportunity was given to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

The landlord affirmed that the tenants were both served with the landlords' application, Notice of Hearing and documentary evidence.

Preliminary and Procedural Matters

The email addresses of both parties were provided in their respective applications. This decision will be emailed to both parties as a result. The landlord will be emailed any applicable orders.

The landlord testified that in addition to the rent owed for November and December of 2018, the tenants have subsequently not paid the rent for January 2019. As a result, the landlord requested to amend the application to include rent owed for January 2019. The landlord also stated that the tenants continue to occupy the rental unit. As this request to amend the application does not prejudice the respondent tenants as the tenants would be aware that rent is due pursuant to the tenancy agreement, I amend the application to \$6,600.00, which consists of \$2,200.00 in monthly rent for the months of November and December of 2018, and January of 2019.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on August 1, 2018 and was scheduled to end on May 31, 2019. Monthly rent of

\$2,200.00 is due on the first day of each month. The tenants paid a security deposit of \$1,100.00 which the landlord continues to hold.

A copy of the 10 Day Notice was submitted in evidence. The landlord stated that the 10 Day Notice was personally served November 29, 2018 by the landlord. The amount owing indicates \$2,200.00 was due as of November 10, 2018. The landlord testified that the tenants have also failed to pay \$2,200.00 for December 2018 and \$2,200.00 for January 2019 and refuse to communicate with the landlord.

The 10 Day Notice does not include the rental unit address on the bottom portion or an effective date, which the landlord was advised I could correct under the *Act* which I will address below.

Analysis

Based on the undisputed testimony of the landlord and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, I find the tenants failed to dispute the 10 Day Notice by failing to attend this hearing. In addition, section 68 of the *Act* applies and states:

Director's orders: notice to end tenancy

68 (1) If a notice to end a tenancy does not comply with section 52 [form and content of notice to end tenancy], the director may amend the notice if satisfied that

(a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and

(b) in the circumstances, it is reasonable to amend the notice.

[Emphasis added]

Based on the above, I find that the tenant knew or ought to have known what address their rental unit was and be able to calculate 10 tens from November 29, 2018, which is December 9, 2018. Therefore, pursuant to section 68(1) and 68(2) of the *Act* I amend the 10 Day Notice to reflect both and find that the effective vacancy date to be December 9, 2018. Consequently, and pursuant to section 46 of the *Act*, I find the tenants are conclusively presumed under the *Act* to have accepted the effective

vacancy date of December 9, 2018 under section 53 of the *Act*. Section 55 of the *Act* applies and states:

Order of possession for the landlord

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.

[Emphasis added]

As a result and taking into account that I find the amended 10 Day Notice complies with section 52 of the *Act*, as I find the tenants would know or ought to have known that the tenancy ends 10 days after they were served with the 10 Day Notice as the \$2,200.00 amount was not paid since being served the 10 Day Notice, and taking into account that December 2018 and January 2019 rent have also not been paid since the 10 Day Notice was issued, I grant the landlord an order of possession effective **two (2) days** after service on the tenants as the tenants continue to occupy the rental unit.

Unpaid rent – Based on the above, I find the tenants have breached section 26 of the *Act* which states:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

I accept the landlord's undisputed testimony that the tenants owe a total of **\$6,600.00** in unpaid rent and loss of rent as claimed for November and December of 2018 and for January 2019. As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find the landlords have established a total monetary claim of **\$6,700.00** comprised of \$6,600.00 in rent arrears, plus the recovery of the cost of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' full security deposit of \$1,100.00 which has accrued no interest in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$5,600.00**.

Conclusion

The tenants' application is dismissed, without leave to reapply, as indicated above.

The landlord's application is successful. I find the tenancy ended on December 9, 2018. The landlord has been granted an order of possession effective two (2) days after service on the tenants. The landlord must serve the tenants with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlord has established a total monetary claim of \$6,700.00 as described above. The landlord has been authorized to retain the tenants' full security deposit of \$1,100.00 which has accrued no interest, in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$5,600.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 14, 2019

Residential Tenancy Branch