



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>	Landlord:	OPR MNR FF
	Tenant:	OPT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on February 13, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on February 6, 2019 (the “Tenants’ Application”). The Tenants applied for an order of possession, pursuant to the *Act*.

The Landlord was represented at the hearing by C.A. and S.F., agents. The Tenants were represented at the hearing by C.R., who identified herself as P.Y.’s spouse. C.R. was accompanied by G.V., a witness. All in attendance provided affirmed testimony.

On behalf of the Landlord, C.A. testified the Landlord’s Application package was served on the Tenants by registered mail on February 23, 2019. Pursuant to section 89 and 90 of the *Act*, documents served by registered mail are deemed to be received 5 days later. I find the Tenants are deemed to have received the Landlord’s Application package on February 28, 2019.

On behalf of the Tenants, C.R. testified the Tenants' Application package was not served on the Landlord. Accordingly, I find the Tenants' Application is dismissed, without leave to reapply. I find there is no prejudice to the Tenants in doing so as the tenancy will either continue or end based on the evidence of the Landlord.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?
4. Are the Tenants entitled to an order of possession?

Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on December 1, 2017. The parties agreed that rent in the amount of \$1,144.00 per month is due on the 1st day of each month. The Tenants paid a security deposit in the amount of \$550.00, which the Landlord holds.

On behalf of the Landlord, C.A. testified the Tenants did not pay rent when due on February 1, 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 2, 2019 (the "10 Day Notice"). The 10 Day Notice was served on C.R. in person on February 2, 2019. C.R. acknowledged receipt. The 10 Day Notice indicates that \$1,144.00 was outstanding when it was issued. A copy of the 10 Day Notice was submitted into evidence.

C.A. testified further that the Tenants did not pay rent when due on March 1, 2019, and that rent in the amount of \$2,288.00 is currently outstanding.

In reply, C.R. acknowledged rent has not been paid as alleged. However, she stated she was “pushed out” of the rental unit on March 2, 2019, and has not been able to collect her belongings. The parties agreed P.Y. is currently incarcerated, and C.A. testified that his mother has removed his belongings.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a notice to end tenancy for unpaid rent to pay the overdue rent or dispute the notice by making an application for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, C.A. testified that rent in the amount of \$2,288.00 is currently outstanding. C.R. acknowledged rent was not paid as claimed and testified that she has not been able to remove her belongings from the rental unit. I find there is insufficient evidence before me to conclude the Tenants had a right under the *Act* to deduct rent. Incarceration or other hardship is not a basis to withhold rent. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

In addition, I find the Landlord has demonstrated an entitlement to a monetary award of \$2,288.00 for unpaid rent due on February 1 and March 1, 2019. Again, the incarceration of P.Y. is not a justification for failure to pay rent when due. Having been successful, I also grant the Landlord a monetary award in the amount of \$100.00 in recovery of the filing fee. I also find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,430.00, which has been calculated as follows:

Claim	Amount awarded
Unpaid rent:	\$2,288.00
Filing fee:	\$100.00
LESS security deposit:	(\$550.00)
TOTAL:	\$1,838.00

The Tenant applied for an order of possession, pursuant to section 54 of the *Act*. However, as noted above, the Tenants' Application is dismissed, without leave to reapply.

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,838.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 12, 2019

Residential Tenancy Branch