



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, OPR, MNDCL-S, MNRL-S, FFL

Introduction

This hearing involved cross applications made by the parties. On April 5, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking a repair Order pursuant to Section 32 of the *Act*.

On April 9, 2019, the Landlords made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenant advised that he did not serve the Landlord the Notice of Hearing package. Based on this undisputed testimony, I am not satisfied that the Landlords were served with the Notice of Hearing package. As such, I dismiss the Tenants’ Application without leave to reapply.

The Landlord advised that he served each Tenant the Notice of Hearing package and evidence by hand on November 9, 2019 and the Tenant confirmed receiving these packages. Based on this undisputed testimony, as these documents were served in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served with the Notice of Hearing package and evidence.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on April 1, 2017 and that rent was established at \$1,350.00 per month, due on the first day of each month. A security deposit of \$675.00 was also paid.

All parties agreed that the Notice was served in person on April 2, 2019. The Landlord advised that the Notice indicated that \$1,350.00 was outstanding on April 1, 2019. The Notice also indicated that the effective end date of the tenancy was April 11, 2019. Both parties acknowledged that rent was not paid in April 2019. However, on May 2, 2019, the Tenant provided employment assistance cheques for April 2019 rent, and he paid \$1,075.00 in cash towards May 2019 rent, leaving a balance of **\$275.00** still outstanding. The Tenant confirmed that he did not have authority under the *Act* to withhold the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants received the Notice on April 2, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Sunday April 7, 2019, the Tenants must have paid the rent in full by this day or disputed the Notice by April 8, 2019 at the latest. The undisputed evidence is that the Tenants did not pay the rent in full until May 2, 2019 and made this Application on April 5, 2019. However, The Tenants did not serve the Notice of Hearing package and the Tenant acknowledged that he did not have any authorization that permitted the Tenants to withhold the rent.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being served the Notice. Moreover, the Tenants did not serve the Notice of Hearing package or establish that they had a valid reason for withholding the rent pursuant to the *Act*. As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

I also find that the Landlords are entitled to a monetary award and I grant the Landlords a monetary award in the amount of **\$275.00**, which is comprised of rent owed for the balance of May 2019 rent.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

| Item | Amount |
|-----------------------------|-----------------|
| May 2019 – Outstanding rent | \$275.00 |
| Filing fee | \$100.00 |
| Total Monetary Award | \$375.00 |

Conclusion

I dismiss the Tenants' Application and I grant an Order of Possession to the Landlords effective on **May 31, 2019 at 1:00 PM after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords are provided with a Monetary Order in the amount of **\$375.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: May 23, 2019

Residential Tenancy Branch