



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL OPC OPU CNC FFT

Introduction

This hearing dealt with two applications application pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$4,550.00 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenants’ for:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the “**Notice**”) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:42 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were served the notice of dispute resolution form and supporting evidence package via registered mail on March 25, 2019. The landlord also testified that she served evidence in response to the tenants’ application on the tenants by registered mail on May 8, 2019. The landlord provided Canada Post tracking

numbers confirming these mailings which are reproduced on the cover of this decision. I find that the tenants are deemed served with these documents in accordance with the Act.

Preliminary Issue – Form of Pleading

The landlord advised me that, initially, she had applied for an order of possession based on a 10 Day Notice to End Tenancy. This Notice was not entered into evidence. The landlord testified that, subsequently, she amended her application to seek an order of possession based on the Notice.

She testified that she is not seeking an order of possession based on the 10 Day Notice, but rather on the Notice.

Accordingly, I dismiss, without leave to reapply, the landlord's application for an order of possession based on a 10 Day Notice to End Tenancy (RTB dispute code OPU).

Issue(s) to be Decided

Are the tenants entitled to:

- 1) the cancelation of the Notice;
- 2) recover their filing fee?

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$4,550.00 for unpaid rent; and
- 3) recover her filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, month-to-month tenancy agreement starting December 7, 2019. Monthly rent is \$2,275.00 and is payable on the seventh of each month.

The tenancy agreement states that the tenants provided a security deposit of \$100.00 and a pet damage deposit of \$100.00. However, the landlord testified that the amount of the security deposit provided is incorrect, and that the tenants actually provided her with a security deposit of \$1,150.00. The landlord still retains both deposits.

Additionally, the tenancy agreement does not state whom the agreement is between. In the place where a landlord's name ought to be, the tenants' names have been written. The names of the tenants' grandchildren have been written in the place where the tenants' names are meant to go. The landlord did, however, sign the tenancy agreement on its final page. Her signature is clear and legible. The landlord testified that she is the sole landlord on the tenancy agreement.

The landlord testified that the tenants have been late in paying rent every month of the tenancy. She testified that the tenants paid December 2018's rent on December 14, January 2019's rent on January 12, February 2019's rent on February 20, and March 2019's rent on March 15.

She testified that she served the tenants with the Notice by registered mail on March 25, 2019, with an effective move-out date of April 30, 2019. The Notice does not state the date it was issued. The basis stated on the Notice for ending the tenancy was "Tenant is repeatedly late paying rent".

The landlord testified that the tenants have not paid rent since she served them with the Notice. She stated that the tenants are in arrears for April and May 2019's rent in the amount of \$4,550.00.

The landlord testified that the tenants remain in the rental unit.

Analysis

I find that, despite the landlord's name not appearing on the first page of the tenancy agreement, that the landlord is a party to the tenancy agreement. I base this finding on the landlord's uncontroverted testimony and the fact that her signature appears on the final page of the tenancy agreement where the agreement indicates the landlord is to sign.

I accept the landlord's undisputed testimony that the tenants paid the landlord a security deposit of \$1,150.00 and not, as stated on the tenancy agreement, \$100.00. I make this

finding on the basis that despite the fact that such a finding is adverse to the interests of the landlord, the landlord submitted that it is true. I cannot see any reason for the landlord to have fabricated her oral testimony on this point. As such, I accept it.

Section 47(1)(b) of the Act states, “a landlord may end a tenancy by giving a notice to end tenancy if the tenant is repeatedly late paying rent.” This issue is examined in more detail by the Policy Guidelines.

Residential Tenancy Policy Guideline 38 states:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late.

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

[...]

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Section 26 of the Act 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]

Per section 26 of the Act, and Policy Guideline 38, the tenants are obligated to pay monthly rent on time. Section 47(1)(b) authorizes a landlord to end a tenancy if rent is repeatedly paid late. Upon reviewing the evidence and considering the landlord's testimony, I find that the tenants were late in paying rent in the months of December 2018, January 2019, February 2019, and March 2019.

Accordingly, I find that the Notice was validly issued on the basis that the tenants were repeatedly late in paying their rent, and I dismiss the tenants' application to cancel the Notice.

Section 55 of the Act 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.

Despite the fact that the Notice did not include the date it was issued on it, I find that the form of the Notice complies with section 52 of the Act. I accept the landlords' undisputed testimony that it was served via registered mail on March 25, 2019. Any dispute as to the date it was issued can be determined conclusively by reviewing the Canada Post tracking information.

As I have dismissed the tenants' application, and I have found that the Notice complies with section 52 of the Act, I find that the landlord is entitled to an order of possession effective two days of the tenants being served with this order by the landlord.

I accept the landlord's undisputed testimony that the tenants have failed to pay month rent for April of May 2019. I accept that the monthly rent is \$2,275.00 as set out in the tenancy agreement. As such, I order that the tenants pay the landlord \$4,550.00, representing the rental arrears they owe.

As the landlord has been successful in her application, I order that the tenants pay her \$100.00, representing reimbursement of her filing fee.

I order that the landlord may retain both the security deposit (\$1,150.00) and the pet damage deposit (\$100.00) in partial satisfaction of the above-made monetary orders.

In summary, I order that the tenants pay the landlord \$3,400.00, as follows:

April 2019 Rent	\$2,275.00
May 2019 Rent	\$2,275.00
Filing Fee	\$100.00
Pet Damage deposit	-\$100.00
Security Deposit credit	-\$1,150.00
Total	\$3,400.00

Conclusion

I dismiss, without leave to reapply, the tenants' application.

Pursuant to section 55 of the Act, I order that the I order that the tenants deliver full and peaceable vacant possession and occupation of the rental unit to the landlord, within two days of being served this order by the landlord. This order may be filed and enforced in the Supreme Court of British Columbia.

Pursuant to sections 67 and 72, I order that the tenants pay the landlord \$3,400.00, as set out above. This order may be filed and enforced in the Provincial (Small Claims) Court of British Columbia.

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 17, 2019

Residential Tenancy Branch