



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPM-DR MNRL-S FFL
For the tenants: CNR OLC LRE

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) from both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlords 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 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 14, 2019 (“10 Day Notice”), for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, and to suspend or set conditions on the landlords’ right to enter the rental unit.

The landlords 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 Proceeding (“Notice of Hearing”) dated March 21, 2019 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 landlords 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 and the two landlords who called in with the same phone number, which left only two parties on the line for the entire hearing according to the teleconference system, which I monitored throughout the hearing which lasted 26 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 landlords, and the landlords were given an opportunity was given to ask questions about the hearing process. Thereafter the landlords 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 Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

The landlords affirmed that the tenants were served with their application, Notice of Hearing and documentary evidence by posting to the rental unit door on May 24, 2019 in the afternoon. Based on the above, I am satisfied that the tenants were sufficiently served as required by the *Act* for the order of possession application; however section 89 of the *Act* does not permit posting to the door as a method of service for monetary claims. Therefore, I am not satisfied that the landlords served the tenants in a method approved under the *Act* for the monetary claim. Therefore, I dismiss the landlord’s request for unpaid rent or utilities **with leave to reapply** due to a service issue. Regarding the order of possession and the filing fee, I consider those aspects of the landlords’ claim to be undisputed by the tenants as the tenants failed to attend the hearing.

Preliminary and Procedural Matter

As both parties provided their email address in their respective applications, the decision will be emailed to both parties. The order of possession will be emailed to the landlords for service on the tenants.

Issues to be Decided

- Are the landlords entitled to an order of possession under the *Act*?
- Are the landlords 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 month to month tenancy began on March 31, 2019. Monthly rent of \$1,100.00 is due on the first day of each month. The tenants paid a security deposit of \$500.00, which the landlords continue to hold.

A copy of the 10 Day Notice was submitted in evidence. The landlords stated that the 10 Day Notice was posted to the tenants' door on May 14, 2019. The amount owing indicates \$1,100.00 due May 1, 2019 and the landlords stated that since that date, the tenants have also failed to pay \$1,100.00 for June 2019. The landlord are seeking an order of possession as they are unsure if the tenants have vacated and confirmed that the tenants have not returned the rental unit key. The landlords are also seeking the recovery of the cost of the filing fee. The effective vacancy date listed on the 10 Day Notice was May 24, 2018, which as passed.

Analysis

Based on the undisputed testimony of the landlords 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. Secondly, I accept the undisputed testimony of the landlords that the tenants failed to pay May 2019 rent at any time. Therefore, pursuant to section 46 of the *Act* I find the tenants are conclusively presumed under the *Act* to have accepted the effective vacancy date which automatically corrects to May 27, 2019 under section 53 of the *Act* as the 10 Day Notice was posted to the tenants' door on May 17, 2019. 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 10 Day Notice complies with section 52 of the *Act*, I grant the landlords an order of possession effective **two (2) days** after service on the tenants.

As the landlords' application had merit, I authorize the landlords to immediately retain **\$100.00** from the tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. I find the tenants' security deposit balance is now \$400.00, effectively immediately pursuant to sections 38, 67 and 72 of the *Act*.

The tenancy ended May 27, 2019.

Conclusion

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

The landlords' application is successful. I note a portion of the landlords' application was dismissed with leave to reapply as indicated above, due to a service issue. I find the tenancy ended on May 27, 2019. The landlords have been granted an order of possession effective two (2) days after service on the tenants. The landlords 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 landlords have been authorized to retain \$100.00 from the tenants' security deposit in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*. The tenants' security deposit balance is now \$400.00, effectively immediately.

This decision will be emailed to both parties. The order of possession will be emailed to the landlords only for service on the tenants.

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: June 28, 2019

Residential Tenancy Branch