



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPRM-DR, CNR, ERP, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, for a monetary Order for unpaid rent or utilities, and to recover the fee for filing an Application for Dispute Resolution.

The Tenants filed an Application for Dispute Resolution in which they applied to cancel a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to make repairs, and to recover the fee for filing an Application for Dispute Resolution.

The Agent for Landlord stated that on May 22, 2019 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch on May 16, 2019 was sent to the each Tenant named on the Landlord's Application for Dispute Resolution, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. On the basis of the undisputed evidence I find that these documents were properly served to the Tenants. As these documents were properly served to the Tenants, the hearing proceeded in their absence and the evidence was accepted as evidence for these proceedings.

On June 03, 2019 the Landlord submitted additional evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to the Tenants, via registered mail, on June 02, 2019. On the basis of the undisputed evidence I find that these documents were properly served to the Tenants and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord affirmed that she would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter #1

The teleconference hearing was scheduled to begin at 11:00 a.m. on this date. The Agent for the Landlord joined the teleconference prior to the scheduled start date. By the time the teleconference was terminated at 11:11 a.m., nobody representing the Tenants had appeared.

I confirmed from the teleconference system that the Agent for the Landlord and I were the only ones who had called into this teleconference.

I find that the Tenants failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss their Application without leave to reapply.

Preliminary Matter #2

The Agent for the Landlord applied to amend the Landlord's Application for Dispute Resolution to include unpaid rent from June of 2019. I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or utilities?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on April 15, 2018;
- the Tenant was required to pay monthly rent of \$2,100.00 by the first day of each month;
- the Tenants did not pay any rent for April, May, or June of 2019;

- a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 16, 2019, was posted on the door of the rental unit on May 06, 2019; and
- the Tenants are still occupying the rental unit.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,100.00 by the first day of each month and that the Tenants have not paid rent for April or May of 2019. As the Tenants are required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$4,200.00 in outstanding rent for those months.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on May 06, 2019. As the Tenants have not paid the rent that was due for April or May of 2019, I find that the Landlord had grounds to serve a Ten Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46(1) of the *Act*.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on May 09, 2019. As the Tenants have been served with a Ten Day Notice to End Tenancy for Unpaid Rent and the outstanding rent has not paid, I find that the Landlord has grounds to end this tenancy, pursuant to section 46(1) of the *Act*. I therefore find that the Landlord is entitled to an Order of Possession.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on May 09, 2019 I find that the earliest effective date of the Notice was May 19, 2019.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was May 19, 2019.

As the Tenants did not vacate the rental unit by the effective date of the Notice to End Tenancy, I find that the Tenants are obligated to pay rent for the days the Tenants remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between May 19, 2019 and May 31, 2019, I find that the Landlord has been fully compensated for that period. I find that the Tenants must also pay rent for the month of June of 2019, as the Order of Possession being granted entitles them to remain in the unit until June 30, 2019.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on June 30, 2019. This Order may be served on the Tenants, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$6,400.00, which includes \$6,300.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$6,400.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: June 25, 2019

Residential Tenancy Branch