



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR-S, MNDC-S, FF, CNR, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided testimony. The landlord's agent (the landlord) stated that each of the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on June 20, 2019. The tenant, J.L. (the tenants) argued that this package was not received. The landlord provided documentary evidence (the Canada Post Customer Receipt Tracking Labels) for all 3 packages in support of this claim. The landlord stated that 2 out of the 3 packages were returned by Canada Post as

“unclaimed” and that the third package was accepted and signed for on June 24, 2019 by an adult female occupying the rental space. The tenants confirmed that two packages were not accepted and the third was accepted and signed for by a female friend who is not a tenant. The tenants confirmed that the package was given to the tenants. The tenants stated that they served their notice of hearing package to the landlord via Canada Post Regular Mail. The landlord argued that no such package was received. The tenants were not able to provide any supporting proof of service.

I accept the testimony of both parties and find based upon the evidence provided that the tenants were sufficiently served as per section 90 of the Act. Although the tenants argued that they did not accept and sign for the landlord’s notice of hearing package and submitted evidence themselves, a third party female accepted and signed for one out of the three packages on June 24, 2019. This was confirmed by the tenants that the package was passed on to the tenants after the third party female accepted and signed for the package. The tenants are deemed served.

On the tenants’ notice of hearing, package, I find that the landlord was not properly served. The tenants relied solely on direct testimony that the tenants’ notice of hearing package was served via Canada Post Regular Mail which was disputed by the landlord. The tenants were unable to provide sufficient supporting evidence of service. In the absence of this evidence of service, I find that the landlord was not served. The tenants’ application is dismissed for lack of service.

Preliminary Issue(s)

At the outset, the applications of both parties were discussed and clarified. Although the tenants disputed that they were not served with the landlords’ application for dispute personally, the tenants confirmed that they did receive one out of the three packages sent by the landlord. The tenants argued that they were not aware of the issues, but confirmed that they did file an application to dispute the landlord’s 10 Day Notice. On this basis, I find that the tenants were aware of the issues and were prepared to speak to them for the hearing. The hearing shall proceed on the landlord’s application only.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on March 3, 2019 on a fixed term tenancy ending on May 31, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 3, 2019. The monthly rent is \$2,800.00 payable on the 1st day of each month. A security deposit of \$1,400.00 was paid.

The landlord claims that the tenants were served with the 10 Day Notice dated May 28, 2019 in person on May 28, 2019. The 10 Day Notice states that the tenants failed to pay rent of \$800.00 that was due on May 1, 2019 and provides for an effective end of tenancy date of June 7, 2019. The tenants confirmed receipt of the 10 Day Notice dated May 28, 2019 and dispute the landlord's claims of unpaid rent.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$6,400.00. The landlord claims that having been served with the 10 Day Notice dated May 28, 2019 and the tenants have not paid the rent nor filed an application for dispute within the allowed time frames.

The landlord provided monetary details of the \$6,400.00 which consists of:

\$800.00	Unpaid Rent, May 2019
\$2,800.00	Unpaid Rent, June 2019
\$2,800.00	Loss/Unpaid Rent, July 2019

The tenants argued that rent has been paid for May and June 2019, for which no receipts were issued by the landlord. The tenants also stated that no rent has been paid to the landlord for July 2019 as they are waiting for the outcome of this hearing.

The landlord reargued that no rent has been paid as per the landlords above noted monetary claim details and the submitted 10 Day Notice.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the testimony of both parties and find that the landlord did serve the tenants with the 10 Day Notice dated May 28, 2019. The tenants confirmed receipt of this notice in direct testimony.

The tenants argued that all the rent for May 2019 was paid in cash for which the landlord failed to provide a receipt. The tenants further argued that all the rent for June 2019 was paid in cash which the landlord failed to provide a receipt. The landlord has argued that no rent has been paid as stated in the application for dispute.

I find it highly unlikely that despite the tenants argument of paying rent in cash for which no receipt was issued, that having been served with a 10 Day Notice by the landlord in May 2019, the tenants would still choose to pay rent in cash again without any type of demand for a receipt or record of payment for June 2019. On this basis, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. The 10 Day Notice dated May 28, 2019 is upheld. The landlord is granted an order of possession to be effective 2 days after it is served upon the tenants.

As for the monetary claim, I find that the landlord has established a claim of unpaid rent of \$800.00 for May 2019 based upon the 10 Day Notice and that the subsequent June 2019 rent of \$2,800.00 was not paid. I also find based upon the evidence of the tenants that no rent of \$2,800.00 was paid for July 2019 and that the tenants still occupy the rental space. The landlord is entitled to \$6,400.00 in unpaid/loss of rent.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I also authorize the landlord to retain the \$1,400.00 security deposit in partial satisfaction of the claim.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$5,100.00.

These orders must be served upon the tenants. Should the tenants fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those courts.

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: July 25, 2019

Residential Tenancy Branch