



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNRL-S, OPR, OPC, FFL

Introduction

This hearing involved cross applications made by the parties. On August 6, 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”).

On August 8, 2019, the Tenants amended their Application seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*.

On August 13, 2019, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Act*, seeking an Order of Possession for Cause pursuant to Section 47 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, seeking to apply the security deposit and pet damage deposit towards the unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants did not attend the 33-minute hearing. J.G. and A.G. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

A.G. advised that the Notice of Hearing package was served to the Tenants by registered mail on August 21, 2019 (the registered mail tracking number was provided on the first page of this decision). Based on this undisputed testimony, I am satisfied that the Landlord served the Tenants with the Notice of Hearing package in accordance with Sections 89 and 90 of the *Act* and that the Tenants were deemed to have received this package five days after being mailed.

A.G. advised that the Landlord's evidence package was served to the Tenants by registered mail on August 21, 2019 (the registered mail tracking number was provided on the first page of this decision). Based on this undisputed testimony, I am satisfied that the Landlord served his evidence to the Tenants in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure and that the Tenants were deemed to have received this package five days after being mailed.

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.

As the Tenants did not attend the hearing, I dismiss their Application without leave to reapply.

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 and utilities?
- Is the Landlord entitled to apply the security deposit and pet damage deposit towards the unpaid rent and utilities?
- Is the Landlord 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.

A.G. advised that as per the tenancy agreement, submitted as documentary evidence, the tenancy started on October 1, 2018. Rent was established at \$2,400.00 per month, due on the first day of each month. While not noted in the tenancy agreement, a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 were also paid.

J.G. advised that the Notice was served to the Tenants by posting it to their door on August 2, 2019, with A.G. witnessing this service. He stated that \$2,400.00 was outstanding on August 1, 2019. The Notice also indicated that the effective end date of

the tenancy was August 12, 2019. As well, while the date on the Notice of when it was posted was noted as August 2, 2019, he confirmed that this was a clerical error.

J.G. advised that the Landlord was seeking compensation in the amount of **\$4,800.00** which is comprised of August and September 2019 unpaid rent. He was also seeking compensation of \$2,400.00 for October 2019 rent; however, as this claim was premature, this claim was dismissed with leave to reapply.

A.G. advised that the Landlord was seeking compensation in the amount of **\$183.87** for 50% of the gas utilities that the Tenants were responsible for as per their tenancy agreement. She stated that the Tenants had been paying for 50% of these utilities from the start of the tenancy but stopped paying these since April 2019. The amount of compensation sought is for the gas utilities of April, May, June, and July 2019 only. She referenced gas utility bills, submitted as documentary evidence, to substantiate this claim.

As well, A.G. advised that the Landlord was seeking compensation in the amount of **\$408.23** for 50% of the electrical utilities that the Tenants were responsible for as per their tenancy agreement. She stated that the Tenants had been paying for 50% of these utilities from the start of the tenancy but stopped paying this since April 2019 as well. The amount of compensation sought is for the electrical utilities of April, May, June, July, and August 2019 only. She referenced electrical utility bills submitted as documentary evidence to substantiate this claim.

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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. While the date the Landlord served the Notice contained the

incorrect year of when it was served, I can reasonably infer that this was likely a clerical error and does not impact the validity of the Notice. As such, 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 Landlord complies 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 Landlord 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 were served the Notice by being posted to their door on August 2, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being deemed to receive the Notice, 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 Saturday August 10, 2019, the Tenants must have paid the rent in full on this date at the latest or made their Application to dispute the Notice by August 12, 2019 at the latest. 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 deemed to have received the Notice. Moreover, while the Tenants disputed the Notice, there is no evidence before me that the Tenants had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 89 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a Monetary Order in the amount of **\$4,800.00** for August and September 2019 rent arrears.

With respect to the Landlord's claims of **\$183.87** and **\$408.23** for gas and electrical utilities owed, based on the undisputed evidence and testimony before me, I am also satisfied that the Landlord is entitled to a monetary award for these amounts.

As the Landlord was successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. While the Landlord made an Application to apply the security deposit and pet damage deposit towards the arrears owing, A.G. advised that the Landlord would like to refrain from applying these deposits now, but would deal with these deposits at the end of the tenancy pursuant to Section 38 of the *Act*.

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

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
August 2019 rent arrears	\$2,4000.00
September 2019 rent arrears	\$2,4000.00
Gas utilities	\$183.87
Electrical utilities	\$408.23
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$5,492.10

Conclusion

The Tenants' Application is dismissed without leave to reapply.

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenants. Should the Tenants or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of **\$5,492.10** 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: September 20, 2019

Residential Tenancy Branch