



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WGP SEATON DEVELOPMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RP, OPRM-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On August 2, 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”) and seeking a repair Order pursuant to Section 32 of the *Act*. On August 13, 2019, this Application was set down for a participatory hearing on October 7, 2019 at 9:30 AM.

On August 7, 2019, the Landlords applied for a Direct Request proceeding seeking an Order of Possession for unpaid rent pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On August 15, 2019, this Application was set down for a participatory hearing to be heard as a cross application with the Tenants’ Application.

On September 9, 2019, the Landlords amended their Application to increase the amount of monetary compensation pursuant to to Section 67 of the *Act*.

The Tenants did not attend the 12-minute hearing. E.C and E.S. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

E.C. advised that the Landlords did not receive the Tenants’ Notice of Hearing package. As the Tenants did not attend the hearing and as there is no evidence that their Notice of Hearing package was served to the Landlords, I have dismissed their Application in its entirety.

E.S. advised that the Landlords' Notice of Hearing and evidence package was served to each Tenant by registered mail on August 15, 2019 (the registered mail tracking numbers are on the first page of this decision). Based on this undisputed testimony and the registered mail tracking history, in accordance with Sections 89 and 90 of the Act, I am satisfied that the Tenants were deemed to have received the Landlords' Notice of Hearing and evidence package five days after they were mailed.

She stated that the Amendment was served to the Tenants on September 9, 2019. Based on this undisputed testimony, I am satisfied that the Tenants were served the Amendment as well.

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.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession for unpaid rent?
- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to recovery of 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.

E.S. advised that the tenancy started on April 5, 2019 and that rent was currently established at \$1,750.00 per month, due on the first of each month. A security deposit of \$875.00 was also paid. The Landlords submitted a signed copy of the tenancy agreement as documentary evidence.

She advised that the Tenants did not pay June or July 2019 rent, so the Notice was served to the Tenants by posting it to their door on July 24, 2019. The Notice indicated

that \$3,500.00 was outstanding on July 1, 2019 and that the effective end date of the Notice was August 10, 2019.

The Landlords are seeking a monetary award in the amount of **\$8,750.00** for rent arrears for June, July, August, September, and October 2019 rent.

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.

I have reviewed the Landlords' 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. 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 Landlords comply 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 Landlords 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 deemed to have received the Notice on July 27, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days 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 Thursday August 1, 2019, the Tenants must have paid the rent in full or disputed the Notice by this date at the latest. The undisputed evidence is that the Tenants did not pay the rent and made their Application on August 2, 2019. There is no evidence before me that permitted the Tenants to withhold the rent.

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, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenants did not dispute the Notice until August 2, 2019. Ultimately, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

As the Landlords' Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

I also find that the Landlords are entitled to a monetary award, and I grant the Landlords a monetary award in the amount of **\$8,750.00**, which is comprised of rent owed for the months of June, July, August, September, and October 2019.

As the Landlords were successful in this application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for this application.

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

Calculation of Monetary Award Payable by the Tenants to the Landlords

June 2019 rent	\$1,750.00
July 2019 rent	\$1,750.00
August 2019 rent	\$1,750.00
September 2019 rent	\$1,750.00
October 2019 rent	\$1,750.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$8,850.00

Conclusion

I dismiss the Tenants' Application and I grant an Order of Possession to the Landlords **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlords are provided with a Monetary Order in the amount of **\$8,850.00** 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: October 7, 2019

Residential Tenancy Branch