



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR MNR FF
 Tenant: MT CNR OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlord’s Application for Dispute Resolution was made on August 19, 2019 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Tenants’ Application for Dispute Resolution was made on August 8, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order granting more time to make an application for dispute resolution;
- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2019 (the “10 Day Notice”); and
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement.

The Landlord was represented at the hearing by K.M., an agent, who provided affirmed testimony. The Tenants did not attend the hearing. Accordingly, the Tenants’ Application is dismissed, without leave to reapply. It has not been considered further in this Decision.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55(1) of the *Act* requires that I grant an order of possession to a landlord. The language in the *Act* is mandatory. In this case, the Tenants' Application has been dismissed, without leave to reapply. Further, having reviewed the 10 Day Notice, I find it complied with section 52 of the *Act*. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

On behalf of the Landlord, K.M. testified the Landlord's Application package was served on the Tenants by registered mail on August 30, 2019. Sections 89 and 90 of the *Act* confirm that documents served by registered mail are deemed to be received 5 days later. Therefore, I find the Tenants are deemed to have received the Landlord's Application package on September 4, 2019.

The Landlord's agent was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirms the fixed-term tenancy began on May 1, 2019 and was expected to continue to April 30, 2020. Rent in the amount of \$1,495.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$747.50, which the Landlord holds.

On behalf of the Landlord, K.M. testified the Tenants did not pay rent when due on August 1, 2019. Accordingly, the Landlord issued the 10 Day Notice, which was posted on the door of the Tenants' rental unit on August 2, 2019. The Tenants' Application confirmed receipt of the 10 Day Notice on that date. K.M. testified that rent in the amount of \$1,560.00 was outstanding at that time. However, the Tenants subsequently made a partial payment of \$230.00 on August 5, 2019, leaving \$1,330.00 due.

Further, K.M. testified that rent was not paid when due on September 1 and October 1, 2019, and that rent totalling \$4,320.00 is currently outstanding.

The Landlord submitted a Tenant Ledger for the period from April 29 to August 6, 2019 in support of the claim for unpaid rent.

The Tenants did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on all of the above, the evidence and unchallenged testimony, and on a balance of probabilities, I find as follows.

Section 26 of the *Act* confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

In this case, I find the Tenants did not pay rent in full as alleged and that there is insufficient evidence before me to conclude the Tenants had a right under the *Act* to deduct all or a portion of rent. Therefore, I find the Landlord has demonstrated an entitlement to a monetary award in the amount of \$4,320.00. Having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Landlord's Application. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the unpaid rent.

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$3,672.50, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$4,320.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$747.50)
TOTAL:	\$3,672.50

Conclusion

The Tenants' Application is dismissed, without leave to reapply.

By operation of section 55(1) of the *Act*, the Landlord is granted an order of possession that will be effective two (2) days after it is served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, the Landlord is granted a monetary order in the amount of \$3,672.50. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 10, 2019

Residential Tenancy Branch