



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PILGER PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties, under the Residential Tenancy Act. The participatory hearing was held, via teleconference, on October 21, 2019.

Preliminary and Procedural Issues

The hearing lasted 13 minutes. The Landlords were present but the Tenants did not attend the hearing. Since the Tenants did not appear at the hearing, I dismiss their application, in its entirety, without leave to reapply. Further, neither the Landlords nor the Tenant had a copy of the 10 Day Notice to End Tenancy (the Notice) or the 1-Month Notice for Cause from August 2019 (the Tenants' applied to cancel both of these). As such, I will not issue an order of possession, pursuant to section 55 of the Act based on either of these Notices from August 2019. The Notice uploaded as part of the Landlords' application (for September 2019) will be addressed further below.

The Landlords attended the hearing and provided testimony. The Landlords stated that they sent the Tenants each a copy of the Application Package and evidence on September 24, 2019, by registered mail. I find the Tenants received this package on September 29, 2019, the fifth day after its registered mailing, pursuant to Section 90 of the Act.

The Landlords have requested to amend their application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I hereby amend the Landlords' application accordingly.

The Landlord was provided 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

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?

Background and Evidence

The Landlords testified that rent, in the amount of \$650.00, is due on the first day of each month. The Landlords stated they do not hold a security deposit.

The Landlords testified that they issued the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on September 4, 2019, by posting it to the door of the rental unit. The amount owing at that time was \$650.00. The Landlord testified that the Tenants have not made any payments since the 10 Day Notice was issued, which brings rent owing to \$1,300.00, including rent for October 2019.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under

this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants owed past due rent at the time the Notice was issued. The landlord served the Notice to the Tenants on September 4, 2019, for \$650.00 in unpaid June rent. The Landlords posted this to the Tenants door on this day. I find the Tenant received the Notice on September 7, 2019, 3 days after it was posted, pursuant to section 90 of the *Act*.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence the Tenants did either. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized above, I find there is sufficient evidence to demonstrate that the tenants owe and have failed to pay \$1,300.00 in past due rent.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were substantially successful in this hearing, I order the tenants to repay the \$100. In summary, I grant the monetary order in the amount of \$1,400.00.

Conclusion

The landlords are granted an order of possession effective **two days after service** on the tenants. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlords are granted a monetary order pursuant to Section 67 in the amount of **\$1,400.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 21, 2019

Residential Tenancy Branch