



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARK ROYAL VENTURES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNRL-S OPR**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fees from the tenants pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The landlord attended the hearing represented by rental coordinators MK and RD ("landlord"). Both tenants attended the hearing and provided independent testimony and were assisted by a mutual friend, BZ.

As both parties were in attendance, service of documents was confirmed. The tenants confirmed receipt of the landlord's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of document in relation to this hearing. Both parties were prepared to deal with the matter of the application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary order against one or both of the tenants?

Can the landlord retain the security deposit?

Can the landlord recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and are addressed in this decision.

A copy of the tenancy agreement was provided as evidence. This one year fixed term tenancy began on December 1, 2018, scheduled to end on November 30, 2019. Rent was set at \$1,625.00 per month with an additional \$75.00 per month for parking. The landlord testified rent is payable on the first day of each month. The tenancy agreement includes a term for liquidated damages indicating the tenants would pay [blank] for ending the tenancy before the end of the fixed term.

A security deposit of \$812.50 was collected and the landlord continues to hold it. The parties agree that \$1,200.00 of the rent is paid through social assistance and that the tenants pay the remainder. The landlord testified that as of August 6, 2019 the tenants were in arrears of rent totalling \$1,629.76. The landlord submitted a ledger of account for the rental unit as evidence of their accounting.

On August 6, 2019, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") by placing the Notice in the tenant's mail slot. A copy of the Notice and a proof of service document were provided as evidence. The Notice indicates the tenants failed to pay rent in the amount of \$1,629.76 that was due as of August 1, 2019 and provides an effective (move-out) date of August 16, 2019. The landlord testified they were not made aware of any changes to the tenancy until they received an email from the tenant GD on August 13th advising them GD had already moved out and left the country. The landlord acknowledges receiving formal notice in writing from GD on October 8th.

The landlord testified that since serving the Notice, social services has paid \$1,200.00 portion of the September rent. The tenants' portion of the September rent remains due, together with the full unsubsidized rent for October, as well as the arrears showing on the Notice dated August 6th.

The tenant GD provided the following testimony. She left the country on June 19, 2019 and sent the landlord a letter indicating she takes no responsibility for the rental unit beyond that time. The problems with unpaid rent didn't happen until after she left and any responsibility for that should fall on the co-tenant, AF. GD testified that she had her friend BZ send the landlord her letter advising of leaving the country by expresspost

mail on June 19th. The tracking number is recorded on the cover page of this decision. The tenant GD did not provide a copy of the letter and was unable to read the contents of the letter to me when prompted.

The tenant AF provided the following testimony. There are two tenants in the rental unit. Social Assistance pays \$1,200.00 of the rent and it goes directly to the landlord. He and the other tenant are to pay \$400.00 rent and he pays his share of it. The co-tenant, his spouse in the other country, is responsible for paying the other share. The tenant AF did not provide any evidence in relation to paying the \$1,629.76 the landlord indicates were in arrears any time after August 6th.

Analysis – Order of Possession

I am satisfied the landlord served the tenants with the Notice three days after placing it in the mail slot in accordance with sections 88 of the Act. The Notice is deemed served on August 9, 2019, three days after placing in the mail slot in accordance with section 90 of the Act.

Sections 46(4) and (5) of the Act state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the Notice before me, I find that the tenants were served with an effective Notice and did not file an application to dispute it within the 5 days. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days ended their tenancy on the effective date of the Notice. In this case, this required the tenants to vacate the premises by August 16th, automatically changed to August 19th, 10 days after the Notice was deemed served in accordance with section 53 of the *Act*. As the tenants have not yet vacated the premises, I find that the landlord is entitled to an Order of Possession effective 2 days after service.

The landlord is given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within 2 days of receiving the Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

Analysis – Monetary Order

In the case before me, the landlord and both of the tenants entered into a fixed term (periodic) tenancy agreement. Pursuant to section 45 of the Act,

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Pursuant to section 52,

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
- (e) when given by a landlord, be in the approved form.

In this case, the tenant GD submits that she provided the landlord with the equivalent of a notice to end tenancy by expresspost mail on June 19th and that her responsibility for the tenancy ended when she left the country. Using the tracking number provided, I was unable to confirm delivery of the package she testified she sent by expresspost on June 19th. I am not satisfied the tenant GD served the letter in accordance with section 88 of the Act until October 8th, the day the landlord acknowledges receiving it.

Further, the tenant GD has not provided a copy of the letter she states she served upon the landlords. When prompted to read the contents of the letter to me, the tenant was unable to do so. As such, I am not satisfied the tenant GD's notice to end tenancy meets the requirements of section 52. Consequently, the tenancy has not ended. As

the tenant GD did not end the tenancy in accordance with section 45 and remains a tenant as defined by the Act, she retains the rights, obligations and prohibitions under the Act enforceable under the tenancy agreement. This includes the obligation to pay the rent as required by section 26.

The tenant AF gave confusing and contradictory evidence as to how much rent was due, stating his rent is \$1,600.00 despite tenancy agreement indicating it's \$1,625.00 plus an additional \$75.00 for parking. He testified he pays \$800.00 of the rent monthly, then stated he pays \$400.00 then testified there are two tenants and he only pays his share. While the tenant AF testified as to why he felt he was only responsible for paying his portion of the rent, he did not provide any evidence to satisfy me that the \$1,629.76 owing on the Notice was ever paid by him or anyone else.

Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I find that neither tenant had a right to deduct any portion of the rent. The tenants failed to pay the \$1,629.76 in rental arrears as of August and are responsible for paying rent up until the end of the tenancy.

The tenancy agreement shows a blank amount the tenants are required to pay for ending the fixed term tenancy early. The landlord has not provided sufficient evidence to support their claim for liquidated damages and this portion of the landlord's claim is dismissed.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security and pet damage deposits totaling \$812.50. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

The landlord is entitled to a monetary order as follows:

Item	Amount
Rental arrears up to August 1, 2019	\$1,629.76
Tenant portion of September rent and parking	\$500.00
October rent and parking	\$1,700.00
Filing fee	\$100.00
Less security deposit	(812.50)
Total	\$3,117.26

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone 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.

I issue a monetary order in the landlord's favour in the amount of **\$3,117.26**.

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 23, 2019

Residential Tenancy Branch