



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR
Landlord: OPRM-DR, FFL

Introduction

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

The Tenants’ Application for Dispute Resolution was made on October 16, 2019 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent.

The Landlords’ Application for Dispute Resolution was made on October 17, 2019, (the “Landlords’ Application”). The Landlords initially applied through the Direct Request process; however, since the Tenants had already filed to dispute the 10 Day Notice to End Tenancy, the Landlords’ Application was scheduled to be heard with the Tenants’ Application. The Landlords applied for the following relief, pursuant to the *Act*:

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

The hearing was scheduled for 9:30 A.M. on November 14, 2019 as a teleconference hearing. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 15 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only persons who had called into this teleconference.

As no one appeared for the Tenants during the hearing, I dismiss their Application to Cancel the 10 Day Notice for unpaid rent without leave to reapply.

The Landlord testified the Application and documentary evidence package was served to the Tenants by registered mail on October 25, 2019. The Landlord provided the Canada Post tracking information during the hearing in support. Based on the oral and written submissions of the Landlords, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on October 30, 2019, the fifth day after their registered mailing.

The Landlord was given an 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. Are the Landlords entitled to an Order of Possession based on the 10 Day Notice for Unpaid Rent dated October 4, 2019 (the "10 Day Notice"), pursuant to Section 55 of the *Act*?
2. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Are the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord testified that the tenancy began on February 1, 2019. Currently, the Tenants are required to pay rent in the amount of \$1,200.00 to the Landlords which is due on the first day of each month. The Tenants paid a security deposit in the amount of \$600.00 which the Landlords continue to hold. The Landlord stated that the Tenants continue to occupy the rental unit.

The Landlord testified that the Tenants did not pay rent in full on October 1, 2019. The Landlord stated that she subsequently issued a 10 Day Notice in the amount of \$1,200.00, dated October 4, 2019 (the "10 Day Notice") with an effective vacancy date of October 14, 2019.

The Landlord stated that she served the 10 Day Notice to the Tenants in person on October 4, 2019. The Landlords submitted a proof of service form in support. The Landlord stated that since receiving the 10 Day Notice, the Tenants paid \$600.00 on October 4, 2019. The Landlord stated that the Tenants failed to pay the remaining portion of October 2019 rent. The Landlord

stated that the Tenants paid \$600.00 on November 4, 2019. The Landlord stated that currently the Tenants owe \$1,200.00 in unpaid rent.

The Landlords are seeking an order of possession as well as a monetary order for unpaid rent. If successful, the Landlords are also seeking the return of the filing fee paid to make the Application.

Analysis

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

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the Landlord served the 10 Day Notice dated to the Tenants in person on October 4, 2019, with an effective vacancy date of October 14, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received on the same date. I find the Tenant is deemed to have received the 10 Day Notice on October 4, 2019.

As the Tenants did not appear at the hearing of their Application, I dismiss the Tenants Application in its entirety without leave to reapply.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlords is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants is cautioned that costs of such enforcement are recoverable from the Tenants.

The Landlord stated that the Tenants have failed to pay rent when due for October and November 2019 in the amount of \$1,200.00. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$1,200.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,300.00, which has been calculated as follows:

<i>Claim</i>	<i>Amount</i>
<i>Unpaid rent October 2019:</i>	<i>\$600.00</i>
<i>Unpaid rent November 2019</i>	<i>\$600.00</i>
<i>Filing fee:</i>	<i>\$100.00</i>
<i>TOTAL:</i>	<i>\$1,300.00</i>

Conclusion

The Tenants did not attend the hearing; therefore, their Application was dismissed. The Tenants breached the tenancy agreement by not paying rent when due.

The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$1,300.00. The monetary order should be served to the Tenants as soon as possible and 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: November 14, 2019

Residential Tenancy Branch