



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on December 10, 2019. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing. However, the Tenants did not. The Landlord stated that he served the Tenants with his application and evidence by registered mail on November 20, 2019. Proof of mailing was provided. Pursuant to section 89 and 90 of the Act, I find the Tenants are deemed served with this package on November 25, 2019.

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.

Preliminary Matters

The hearing was by telephone conference and began promptly, as scheduled, at 11 AM Pacific Time on December 10, 2019, as per the Notice of a Dispute Resolution Hearing provided to the parties. The line remained open while the phone system was monitored for 20 minutes and the only participant who called into the hearing during this time was the Landlord who was ready to proceed. The Landlord testified that the Tenants continue to occupy the rental unit and rent continues to accrue.

After the standard ten minute waiting period, the Tenants' application was **dismissed in full, without leave to reapply**.

Under section 55 of the *Act*, when a Tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52, I must grant the Landlord an order of possession. However, the Landlord stated he already obtained an order of possession on October 9, 2019, based on the 10 Day Notice to End Tenancy issued on September 14, 2019 (which is the Notice the Tenants applied to cancel). The Landlord was also granted a monetary order for September 2019 as part of the decision on October 9, 2019. As a decision has already been rendered with respect to the 10 Day Notice from September 14, 2019, I find I do not have the authority to re-hear or issue another order of possession based on that Notice. As such, the Landlord is not granted an order of possession, pursuant to section 55 of the *Act*, based on the 10 Day Notice to End Tenancy issued in September 2019.

In summary, the Tenants' application is dismissed in full, without leave to reapply. The Landlord will not be granted an order of possession pursuant to section 55 of the *Act*, as he already has an order of possession based on the Notice the Tenants applied to cancel from September 14, 2019.

I note that since that time, the Tenants have not properly vacated and continue to not pay rent. The Landlord has issued a second 10 Day Notice in November 2019, which is the subject of his application today (for an order of possession on the second Notice and to recover the unpaid rent).

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities based on the Notice issued in November 2019?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that rent, in the amount of \$1,400.00, is due on the first day of each month, and that he holds a security deposit of \$700.00.

The Landlord testified that he issued the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on November 4, 2019, by posting it to the door of the rental unit. The Landlord provided a proof of service and brought a third party with him as a witness. The amount owing at that time was \$2,800.00, for October and November 2019 rent. The Landlord stated that the Tenants have also not paid any rent for December 2019, and they refuse to vacate the unit, or make any payments.

Analysis

Based on the unchallenged 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 10 Day Notice was issued. The landlord posted the 10 Day Notice to the front door of the rental unit on November 4, 2019. Pursuant to section 88 and 90 of the *Act*, I find the Tenants are deemed to have received this document 3 days after it was posted to the door.

The Tenants had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenants have paid any rent since that time. 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 \$4,200.00 in past due rent, for October, November, and December 2019. I have amended the Landlord's application to include rent that accrued since he applied.

The Landlord requested that they be able to retain the security deposit of \$700.00 to offset the amount of rent owed, and to recover the \$100 filing fee for this application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was substantially successful in this hearing, I order the tenants to repay the \$100. Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount of rent still owed by the Tenants. In summary, I grant the monetary order based on the following:

Claim	Amount
Cumulative unpaid rent as above	\$4,200.00
Other:	
Filing fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$700.00)
TOTAL:	\$3,600.00

This decision does not change or alter any of the orders issued previously, as this decision is based on newly accrued rent, and a new Notice to End Tenancy.

Conclusion

The landlord is 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 landlord is granted a monetary order pursuant to Section 67 in the amount of **\$3,600.00**. This order must be served on the tenants. If the tenants fails 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: December 10, 2019

Residential Tenancy Branch