



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton West Coast Realty
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes MT, CNR, FFT
OPR, MNRL, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Preliminary Issue- Attendance

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:12 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's property manager attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the property manager and I were the only ones who had called into this teleconference.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenants I order the tenants' application dismissed without liberty to reapply.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that 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. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$2,450.00. Since filing for dispute resolution, the property manager testified that the amount of rent owed by the tenants has increased to \$7,350.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$7,350.00.

Preliminary Issue- Service

The property manager testified that the tenants were each served with the landlord's application for dispute resolution via registered mail on January 29, 2020. The Canada Post receipts and tracking numbers to evidence the above mailings were entered into evidence. I find that the tenants were deemed served with the landlord's application for dispute resolution on February 3, 2020, in accordance with sections 89 and 90 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the property manager's testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The property manager provided the following undisputed testimony. This tenancy began on April 1, 2016 and is currently ongoing. Monthly rent in the amount of \$2,450.00 is payable on the first day of each month. A security deposit of \$1,150.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The property manager testified that a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of January 19, 2020 (the "10 Day Notice"), was posted on the tenant's door on January 9, 2020. A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice states that the tenant failed to pay rent in the amount of \$2,450.00 due on January 1, 2020.

The property manager provided undisputed testimony that the tenant has not paid any rent for January, February or March of 2020. The property manager testified that the total amount owing from January to March 2020 is \$7,350.00.

Analysis

I find that the tenant was deemed served with the 10 Day Notice on January 12, 2020, three days after its posting, in accordance with sections 88 and 90 of the *Act*. Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Section 46(1) of the *Act* states that 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.

Section 46(4) of the *Act* states that 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.

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the undisputed testimony of the property manager, I find that the tenants did not pay the overdue rent within five days of receiving the 10 Day Notice. I find that since the 10 Day Notice complies with section 52 of the *Act* and the tenants' application to cancel the 10 Day Notice was dismissed, the landlord is entitled to a two-day Order of Possession.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,450.00 on the first day of each month. Based on the undisputed

testimony of the property manager I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$7,350.00 in unpaid rent from January to March 2020.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$1,150.00 in part satisfaction of their monetary claim for unpaid rent against the tenants.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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 to the landlord under the following terms:

Item	Amount
Unpaid rent	\$7,350.00
Filing Fee	\$100.00
Less security deposit	-\$1,150.00
TOTAL	\$6,300.00

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: March 17, 2020

Residential Tenancy Branch