



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EIGHTLAND PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT (Tenants' Application)
OPR-DR, OPRM-DR, FFL (Landlord's Application)

Introduction

In this dispute, the tenants filed an application for dispute resolution on January 28, 2020, seeking (1) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, and (2) compensation for \$1.00. A dispute resolution hearing was held, by way of telephone conference, on March 31, 2020. At the outset, I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

The landlord filed an application for dispute resolution on March 5, 2020, seeking (1) an order of possession for unpaid rent, (2) a monetary order for unpaid rent, and (3) recovery of the filing fee. A dispute resolution for the landlord's application was scheduled for April 7, 2020. The landlord testified that he served the Notice of Dispute Resolution Proceeding package for that hearing on the tenants by way of registered mail on or shortly after March 5, 2020.

Given that the landlord's application and the tenants' application pertain to the same rental unit, that the parties are the same in both disputes, and given that the same facts will need to be considered in both applications, I exercise my authority under Rule 2.10 of the *Rules of Procedure*, under the Act, and join the landlord's application with the tenants' application, and shall consider them both in this hearing and for the purposes of this Decision. As such, the hearing scheduled for April 7, 2020, is hereby cancelled.

The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenants did not attend the hearing.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of these applications.

Issues

1. Are the tenants entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46 of the Act?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord (the term "landlord" is used interchangeably with "agent," as the name of the landlord as listed in both applications is of a corporate entity) testified that the tenancy began on September 1, 2019. Monthly rent, which includes utilities in the amount of \$125.00, is currently \$1,375.00. He added that there is a \$100.00 discount in the rent if the tenant pays on time, "which never has." The tenants also paid a security deposit of \$650.00 and a pet damage deposit of \$400.00. A copy of the written tenancy agreement was submitted into evidence.

On January 2, 2020, the landlord served the tenants with the Notice. The landlord testified that the tenants would not, or did not, answer the door, so he left the Notice "in the door." Service was witnessed by another gentleman, Mr. D. A copy of the Notice, along with a completed Proof of Service document, was submitted into evidence. The Notice indicated that rent in the amount of \$1,375.00 was due on January 1, 2020.

On February 25, 2020, the landlord served the tenant with a second Notice. This Notice, a copy of which was submitted into evidence, indicated that rent in the amount of \$900.00 was due on the first of February.

The landlord testified that as of today's date, March 31, 2020, the tenants owe a total of \$3,550.00 in unpaid rent (including the utilities portion of the rent). He anticipates the tenants not paying rent on April 1, 2020, for another \$1,500.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The landlord testified that the tenant did not pay rent when it was due, which resulted in him issuing the two 10 Day Notices to End Tenancy for Unpaid Rent, first on January 2, 2020, and again on February 25, 2020.

Section 55(1) 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.

Section 52 of the Act states that

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.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenants have not paid rent as is required by the tenancy agreement and the Act. Having no evidence before me to find that the tenants had a right to not pay the rent, I dismiss the tenants' application without leave to reapply. Further, having reviewed the first 10 Day Notice to End Tenancy for Unpaid Rent, I find that it complies with section 52 of the Act.

Accordingly, pursuant to section 55(1) of the Act, I grant the landlord an order of possession. Having found the first 10 Day Notice to End Tenancy for Unpaid to be valid, I find that the tenancy ended on January 13, 2020, as indicated on the Notice. I need not consider the second notice that was issued on February 25, 2020, as the notice is considered moot in light of my finding regarding the first notice.

Further, pursuant to section 67 of the Act, I grant the landlord a monetary award in the amount of \$3,550.00. Finally, as the landlord was successful in his application, I also grant his claim for recovery of the filing fee in the amount of \$100.00.

Section 38(4) of the Act states that

A landlord may retain an amount from a security deposit or a pet damage deposit if, [. . .] (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

Given that the tenancy ended on January 13, 2020, I order that the landlord retain the tenants' security and pet damage deposits in the amount of \$1,050.00, pursuant to sections 38(4)(b) and 67 of the Act.

A monetary order for \$2,600.00 for the landlord is thus calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$3,550.00
Filing fee	\$100.00
<i>LESS</i> security and pet damage deposits	(\$1,050.00)
Total:	\$2,600.00

As the tenants did not attend to present their case, I dismiss their application for compensation as indicated in their application, without leave to reapply.

Conclusion

I HEREBY:

1. dismiss the tenants' application without leave to reapply;
2. grant the landlord a monetary order in the amount of \$2,600.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia;
3. order the landlord to retain the full security and pet damage deposits in the amount of \$1,050.00, pursuant to section 38(4) of the Act; and,
4. grant the landlord an order of possession, which must be served on the tenants and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

The landlord should refer to [Residential Tenancy \(COVID-19\) Order](#), MO 73/2020, for clarification on the service and enforcement of the above-noted orders.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 31, 2020

Residential Tenancy Branch