Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNR, CNC, OPR-DR, OPRM-DR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67.

The tenant requested:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlords' 1 Month Notice to End Tenancy for Landlord's Use of Property ("1 Month Notice"), pursuant to section 47;

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 9:40 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing
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. The tenants initiated the dispute resolution process and filed their application first. The landlord filed their application in response to the tenants. As

the tenants chose not to dial in and participate in this hearing I hereby dismiss their application in its entirety without leave to reapply.

The landlords gave sworn testimony that on March 27, 2020 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with copies of the landlords' application and evidence five days later on April 1, 2020.

The landlords provided undisputed testimony that the tenants were served with the 10 Day Notice, on March 2, 2020 by way of registered mail. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on March 7, 2020, five days after mailing. The tenants filed their application to dispute the notice on March 6, 2020, accordingly; I am satisfied that the tenants have been served this notice and initiated this process but chose not to dial into the conference, the hearing proceeded and completed on that basis.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?
Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Background and Evidence

The landlords gave undisputed testimony regarding the following facts. This tenancy began on May 1, 2016, with monthly rent set at $1400.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of $700.00. The tenants continue to reside in the rental unit. AE testified that numerous attempts to work with the tenant have not come to fruition. AE testified that the tenants have made some partial payments with the help of some community support groups but still owes $1400.00 as of this hearing. AE requests a monetary order in that amount and an order of possession.

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) 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.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply. I find that the 10 Day Notice complies with section 52 of the *Act.*

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, March 17, 2020. I find that the landlords are entitled to a 2 day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords provided undisputed evidence that the tenants still owe $1400.00 in unpaid rent. The landlords continue to hold the tenant's security deposit in the amount of $700.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

As the tenant did not attend this hearing, their entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenants**. Should the tenant 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.

The landlord has established a claim for $1400.00. I order that the landlord retain the $700.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of $700.00. This order may be filed in the Small Claims 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: May 12, 2020

Residential Tenancy Branch