



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Quorum (Okanagan) Properties
Inc. tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenants: CNR-MT
For the landlord: OPRM-DR, FFL

Introduction

This hearing dealt with a cross application. The tenants' application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an extension of the timeline for disputing the Notice, pursuant to section 66.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for compensation for unpaid rent, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:29 A.M. to enable the tenants to call into this teleconference hearing scheduled for 11:00 A.M. The tenants did not attend the hearing. The landlord, represented by property manager MD (the landlord), 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 landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Landlord's application

I accept the landlord's testimony that each tenant was served one package with the application and evidence (the materials) by registered mail on October 23, 2020, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenants are deemed to have received the materials on October 28, 2020, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Tenants’ application dismissed

Rules 7.1 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

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.

Accordingly, in the absence of any attendance at this hearing by the tenants, I order the tenants’ application dismissed without leave to reapply.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend her application for \$3,860.00 in unpaid rent to include an additional \$2,600.00 for the unpaid rent of November and December 2020.

The increase in the landlord’s monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord’s monetary claim for unpaid rent to \$6,460.00.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence provided by the attending party, including documentary evidence and the landlord’s testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is the landlord’s obligation to present the evidence to substantiate her claims.

The landlord testified the periodic tenancy started on June 01, 2018. Rent is \$1,300.00 per month, due on the first day of the month. At the outset of the tenancy a security deposit of \$650.00 was collected and the landlord holds it in trust. A tenancy agreement was submitted into evidence.

The landlord affirmed she attached the Notice to the tenants' rental unit front door on September 02, 2020, at 10:44 A.M. The Notice and a witnessed proof of service form were submitted into evidence. The September 02, 2020 Notice is for failure to pay rent in the amount of \$1,300.00 due on September 01, 2020.

The landlord said the tenants have not paid rent since July 09, 2020, when they paid \$1,340.00 and had a positive balance of \$40.00. A ledger and a monetary order worksheet were submitted into evidence. The landlord is asking for a monetary order for unpaid rent for the balance of August 2020 (\$1,260.00) and for September to December 2020 rent (\$1,300 per month), in the total amount of \$6,460.00.

The landlord also stated she mailed a repayment plan to the tenants on August 19, 2020.

A rental management agreement stating the numbered company landlord listed in the tenancy agreement is represented by the applicant landlord was submitted into evidence.

Analysis

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenants to pay monthly rent of \$1,300.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's undisputed testimony, the tenancy agreement and the ledger, I find the tenants are in arrears for \$6,460.00 for the balance of August 2020 rent (\$1,260.00) and for the months of September to December 2020 (\$1,300 per month), in the total amount of \$6,460.00.

Based on the landlord's undisputed testimony and the proof of service form submitted into evidence, I find the Notice was attached to the tenants' front door on September 02,

2020 and, per section 90(c) of the Act, the tenants are deemed served on September 05, 2020.

I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

As the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$650.00 security deposit.

In summary:

Balance of August's rent (1,300.00-40.00)	\$1,260.00
September, October, November and December's 2020 rent (1,300.00 per month)	\$5,200.00
Filing fee	\$100.00
Sub-total	\$6,560.00
Security deposit	-\$650.00
Monetary award	\$5,910.00

I warn the tenants that they may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this order** 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.

Pursuant to sections 38 and 67 of the Act, I authorize the landlord to retain the \$650.00 security deposit and grant the landlord a monetary order in the amount of \$5,910.00.

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: December 08, 2020

Residential Tenancy Branch