



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR-PP, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. this date by way of conference call concerning an amended application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenants for the cost of the application. The application was made by way of the Direct Request process which was adjourned to this participatory hearing and an Interim Decision was provided to the landlords requiring the landlords to serve the tenants with the Interim Decision, Application, notice of this hearing and evidence (the Hearing Package) upon the tenants within 3 days of receiving the Interim Decision.

Both landlords attended the hearing, one of whom gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call.

The landlord testified that the documents required to be served (the Hearing Package) were served to the tenants individually by registered mail on December 30, 2020 and copies of the Registered Domestic Customer Receipts and Canada Post cash register receipt bearing that date have been provided as evidence for this hearing, and I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act* and the Interim Decision.

All evidence of the landlords has been reviewed and is considered in this Decision.

Issues to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 15, 2019 and reverted to a month-to-month tenancy after June 1, 2020, and the tenants still reside in the rental unit. Rent in the amount of \$2,700.00 is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$1,350.00 as well as a pet damage deposit in the amount of \$200.00, both of which are still held in trust by the landlords. The rental unit is the upper unit of a house, and the lower level is also tenanted, and a copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that the tenancy agreement also requires the tenants to pay 65% of hydro and 60% of the Fortis BC bills.

The tenants failed to pay rent or utilities in full in April, 2020 or any month thereafter, and the landlord specified in his testimony how much money was received from the tenants. A Re-Payment Plan was also served to the tenants, a copy of which has been provided for this hearing, which the landlord testified also includes unpaid utilities. The payments made are as follows:

- April, 2020 the tenants paid \$905.71;
- May, 2020 the tenants paid \$736.38;
- June, 2020 the tenants paid \$1,211.68;
- July, 2020 the tenant paid \$1,710.90;
- August, 2020 the tenants paid \$211.94;
- September, 2020 the tenants paid \$2,850.00;
- October, 2020 the tenants paid \$1,900.00.

The total amount paid by the tenants is \$9,526.61. No rent has been paid for November or December, 2020 or for January, 2021.

On November 16, 2020 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated November 16, 2020 and contains an effective date of vacancy of November 30, 2020 for unpaid rent in the amount of \$5,480.00 that was due on November 16, 2020. The landlord testified that the tenants have not served the landlords with an Application for Dispute Resolution disputing the Notice and have not paid any rent since.

The landlord further testified that the address of the rental unit is different on the tenancy agreement than on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities because the landlord made an error on the tenancy agreement, however they both refer to the upper level of the house.

Analysis

Firstly, the *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant fails to do either within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the rental unit by the effective date contained in the Notice.

In this case, I accept the undisputed testimony of the landlord that the tenants have not paid any rent since the Notice was served. The landlord also testified that the tenants have not served the landlords with an Application for Dispute Resolution disputing the Notice, and I have no such application before me. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I find that the tenants are conclusively presumed to have accepted the end of the tenancy, and the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days' notice to the tenants.

With respect to the monetary claim, I have reviewed the Re-payment Plan and other documentary evidence, and I find that for the months of April, 2020 through January, 2021, the tenants have paid a total of \$9,526.62. Given that rent is \$2,700.00 per month, during that period of time the tenants ought to have paid \$27,000.00 in rent, and the difference is \$17,473.38, in addition to utilities. I find that the landlords have established a monetary claim of \$17,473.38 for unpaid rent.

The landlords have not provided copies of any utility bills, and I find that the payments made by the tenants should be applied to rent. The landlords are at liberty to file another Application for Dispute Resolution claiming unpaid utilities.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days' notice to the tenants.

I further grant a monetary order in favour of the landlords as against the tenants for unpaid rent, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$17,573.38.

This order is final and binding and may be enforced.

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: January 22, 2021

Residential Tenancy Branch