



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenants;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The landlord, her assistant, and the tenants attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The tenants did not raise an issue about the service of the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package). The tenants did not submit evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-Service of the hearing documents

The landlord said that the tenants were served with the landlord's application package by attaching the documents to the tenants' window.

Based upon the submissions of the landlord, I accept the tenants were served notice of this hearing and the landlord's application in a manner complying with section 89(2) of the Act, which allows for service of the hearing documents in this manner when a landlord is seeking an order of possession of the rental unit.

As to the landlord's request for a monetary order, section 89(1) of the Act requires that the application for dispute resolution, which includes the notice of hearing, must be given, by personally handing the documents to the tenant or by registered mail to the tenant's address where they reside or to their forwarding address.

In this case, the hearing documents were not served according to the requirements of section 89(1) of the Act; however, as the tenants were present and provided their affirmed testimony, I find the tenants were sufficiently served with the landlord's application as to the landlord's request for monetary compensation. The hearing proceeded on the landlord's entire application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit, monetary compensation for unpaid monthly rent, and to recover the cost of the filing fee?

Background and Evidence

I heard undisputed evidence that the residential property is a large house and that the tenants originally rented a single bedroom in the main part of the house. The evidence also showed that the tenants moved into a separate, self-contained suite in the basement in March 2020. The parties agreed that monthly rent was \$900, due on the first day of the month.

The landlord submitted a copy of a document entitled "Tenancy-housemate Agreement". The document covered a multitude of house rules.

The landlord lives in the upper, main part of the house and currently has several roommates.

The landlord gave evidence that on October 8, 2020, the tenants were served with the Notice, by attaching it to the tenants' window, listing unpaid rent of \$900 owed as of October 1, 2020. The effective vacancy date listed on the Notice was October 16, 2020. Filed into evidence was a copy of the October Notice.

The landlord stated that the tenants did not pay the amount listed and they have not paid any rent since the issuance of the Notice. The landlord said the tenants now owe the monthly rent for October, November, and December, 2020, and January 2021.

Tenants' response –

The tenant submitted that they have not paid the monthly rent, because the landlord has refused it. The tenant said that they had and have always had the monthly rent ready. The tenant explained that the landlord requires them to pay the monthly rent in cash and put the envelope through her door slot. The tenant said that landlord would not take the cash otherwise, and they do not trust the various people living in the upper unit with the landlord with cash.

The landlord's evidence showed that the tenants were served a 10 Day Notice in September, for a September 2020, rent deficiency and a receipt issued to the tenants for that rent payment.

The landlord confirmed that she required the monthly rent in cash, put through the door slot due to issues with the tenants. The landlord said the tenants have not offered the monthly rent and that they did pay the September 2020 rent, by putting the cash through her door slot.

The tenants denied such issues with the landlord.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of their tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I have no evidence before me that the tenants applied to dispute the Notice.

The tenants defended their actions by asserting the landlord would not accept the monthly rent and that they were willing to pay, just not by putting cash through the mail slot.

I do not accept the tenants' evidence. It was the tenants' obligation to pay the monthly rent. The tenants could and ought to have made the payment by paying in cash, as they have before. Had they made a payment and there was a problem in the landlord receiving the payment, that matter could have been dealt with their own application for dispute resolution. Instead, they chose to remain in the rental unit without making any rent payments since October 2020.

For these reasons, I find the landlord submitted sufficient, unopposed evidence to prove that the tenants were served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Here, the Notice was attached on October 8, 2020, and the tenants confirmed, without contradiction, receiving it on October 10, 2020.

In this case, the landlord listed an effective move-out date of October 16, 2020, on the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date is October 20, 2020, 10 days after the tenants confirmed having received the Notice on October 10, 2020.

I find the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, October 20, 2020.

As a result, I find the tenancy ended on October 20, 2020, and that the landlord is entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenants.

I grant the landlord a final, legally binding order of possession of the rental unit. Should the tenants fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenants are **cautioned** that costs of such enforcement, such as bailiff fees, are subject to recovery from the tenants.

Monetary claim-

I find it reasonable that the landlord be allowed to amend her application to account for further unpaid rent as the tenants have yet to vacate the rental unit.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenants owe the amount of unpaid rent of \$3,600, due under the tenancy agreement for the months of October, November and December 2020 and January 2021. I find the landlord has established a monetary claim of \$3,600.

As the landlord's application had merit, I grant her recovery of her filing fee of \$100.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$3,700.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are **cautioned** that costs of such enforcement are subject to recovery from the tenants.

I **dismiss** the claim listed in the landlord's application for unpaid monthly rent July and August 2020, **with leave to reapply**, as the landlord did not provide sufficient particulars about this part of her claim and she did not address it at the hearing.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

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 27, 2021

Residential Tenancy Branch