



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNR
 LL: OPRM-DR, OPR-DR, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenants’ Application for Dispute Resolution was made on March 2, 2021 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice for Unpaid rent.

The Landlord’s Application for Dispute Resolution was made on March 10, 2021 (the “Landlord’s Application”). The Landlord initially applied through the Direct Request process; however, since the Tenants had already filed to dispute the 10 Day Notice to End Tenancy, the Landlord’s Application was scheduled to be heard with the Tenants’ Application. The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for unpaid rent;
- a monetary order for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenants and the Landlord’s Agent S.J. attended the hearing at the appointed date and time. At the start of the hearing, the parties acknowledged service and receipt of each others’ Applications and documentary evidence packages. As there were no issues raised, I find that the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written

evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel the 10 Day Notice for Unpaid Rent dated February 25, 2021 (the "10 Day Notice"), pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on January 15, 2017. Currently, rent in the amount of \$1,612.00 is due to be paid to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$775.00 which the Landlord currently holds. The Tenants continue to occupy the rental unit.

S.J. testified that the Tenants have been consistently short on paying the rent each month. S.J. provided a detailed rent ledger outlining the amount of outstanding rent each month throughout the tenancy. S.J. stated that she subsequently issued the 10 Day Notice in relation to the outstanding balance in amount of \$3,371.00 which was due to the Landlord as of February 1, 2021. S.J. stated that the 10 Day Notice has an effective vacancy date of March 10, 2021.

S.J. stated that she served the 10 Day Notice by posting it on the Tenants' door on February 26, 2021. The Tenants confirmed receipt on the same day. The Tenants confirmed that they owed \$3,371.00 for unpaid rent to the Landlord as of February 1, 2021. The Tenants stated that they have been out of work, therefore, have been struggling to pay rent. The parties agreed that the Tenants made some partial payments toward the outstanding balance of rent, which was eventually paid in full by March 23, 2021.

S.J. stated that while the Tenants were temporarily caught up on the rent as of March 23, 2021, they have since fallen behind again in May and June 2021, currently owing the Landlord \$2,124.00 for unpaid rent. The Tenants confirm that they currently owe this amount to the Landlord.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the Landlord served the 10 Day Notice dated February 25, 2021 with an effective vacancy date of March 10, 2021 by posting it on the Tenants' door on February 26, 2021. The Tenants confirmed receipt on the same day. Therefore, I find the 10 Day Notice sufficiently served pursuant to Section 88 of the Act.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. While the Tenant made an Application to cancel the 10 Day Notice on March 2, 2021 which is within the 5 days limit, I accept that the Tenants did not pay the full amount of unpaid rent which was noted on the 10 Day Notice until March 23, 2021. I find that these payments were made outside of the 5 Day limit.

As a result, pursuant to section 46(5) of the *Act*, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the effective date of March 10, 2021 on 10 Day Notice.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

The parties agreed that the Tenants have not paid rent in the amount of \$2,124.00. I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$2,124.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,449.00, which has been calculated as follows:

<i>Claim</i>	<i>Amount</i>
Unpaid rent:	\$2,124.00
Filing fee:	\$100.00
<i>LESS security deposit:</i>	<i>(\$775.00)</i>
TOTAL:	\$1,449.00

Conclusion

The Tenants breached the tenancy agreement by not paying rent when due.

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,449.00. The monetary order should be served to the Tenants as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 11, 2021

Residential Tenancy Branch