



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, OPR-DR-PP, MNR-PP, FFL, CNR, LRE

Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlords stated that the tenants were served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 8, 2021. The tenants' disputed that no such package was received. The landlords provided undisputed affirmed evidence that a copy of the Canada Post Registered Mail

Receipt and Tracking label were submitted in support of this claim. The landlords referred to the submitted copy in evidence and provided the Canada Post Customer Receipt Tracking number in their direct testimony (noted on the cover of this decision). I accept the undisputed affirmed evidence of the landlords and find on a balance of probabilities that the tenants were properly served. Despite not receiving the package the tenants are deemed served as per section 90 of the Act. The details of the landlords' application were provided to the tenants.

The tenants stated that the landlords were served with the notice of hearing package on their first application for dispute in person on April 12, 2021. The landlords disputed that no such package was served. The tenants were unable to provide any supporting evidence of service. On this basis, I find that the tenants' application for dispute regarding the 10 Day Notice served on April 12, 2021 is dismissed with leave to reapply for lack of service. Leave to reapply is not an extension of any applicable limitation period. I also note that the tenants had requested more time to be allowed to file an application for dispute. The tenants clarified that they did not need more time to make an application, they were only seeking more time to pay the rent.

The tenants stated that the landlords were served with the notice of hearing package on their second application for dispute in person on May 15, 2021. The landlords confirmed receipt of this package. However, during the hearing the tenants request for an order to suspend or set conditions on the landlords' right to enter was clarified. The tenants confirmed that this request was unrelated to the request to cancel the 10 Day Notice dated May 12, 2021. The tenants also confirmed that they did not submit a copy of the 10 Day Notice dated May 12, 2021. On this basis, the tenant's request to suspend or set conditions on the landlord's right to enter was dismissed with leave to reapply pursuant to Rules of Procedure 2.3, Unrelated things. Leave to reapply is not an extension of any applicable limitation period. The tenants stated that they were served with a 10 Day Notice dated May 12, 2021, but the landlords argued that no such notice was issued. The tenants were unable to provide any details for the May 12, 2021 10 Day Notice. The tenants' request to cancel the 10 Day Notice dated May 12, 2021 is dismissed with leave to reapply as the tenants have failed to submit a copy on which they based their application. The landlords disputed that no such notice dated May 12, 2021 was issued. The tenants failed to provide any supporting evidence of a May 12, 2021 10 Day Notice.

The landlords also filed an amendment increasing the monetary claim dated July 5, 2021 from \$2,650.00 to \$5,400.00. However discussions between both parties

confirmed that rental arrears were paid and that as of the date of this hearing the tenants are in rental arrears of \$1,650.00 for August 2021.

The landlords also argued that as part of their amendment they are also seeking to retain all or part of the security deposit against any successful monetary claim. A review of the landlords' amendment did not reveal a request to offset the claim against a security and/or pet damage deposit(s). The landlords clarified that it was added to their monetary order worksheet. Both parties were notified that amendments to the application for dispute must be filed on an amendment and served to the other party. As such, there was no amendment filed to include the landlords' request to offset their claim against a security deposit.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

The landlords provided affirmed testimony that the tenants were both served with a 10 Day Notice to End Tenancy for Unpaid Rent dated May 8, 2021 via Regular Canada Post. The tenants confirmed receipt of the 10 Day Notice. The 10 Day Notice states that the tenants failed to pay rent of \$2,650.00 that was due on May 1, 2021 and provides for an effective end of tenancy date of May 24, 2021.

The tenants confirmed that rent was not paid, but a late payment was made later on July 2, 2021. The landlords stated that the tenants were served with a notice of "use and occupancy only" dated June 2, 2021. The tenants confirmed receipt of this notice.

The landlords claim that as of the date of this hearing the tenants are in rental arrears of \$1,650.00 for August 2021. The tenants confirmed the balance of unpaid rent was owed.

Analysis

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

I accept the undisputed affirmed evidence of both parties and find that the landlords have established that the tenants failed to pay rent when it was due. Despite the tenants paying the rent late on July 2, 2021, the landlords did serve notice of use and occupancy only on June 2, 2021 to the tenants which they confirmed receiving. On this basis, the landlords are granted an order of possession to be effective 2 days after it is served upon the tenants.

On the landlords' claim for unpaid rent of \$1,650.00, I find based upon the undisputed evidence of both parties that the landlord has established a claim for unpaid rent for \$1,650.00.

The landlords are entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlords are granted an order of possession.

The landlords are granted a monetary order for \$1,750.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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: August 18, 2021

Residential Tenancy Branch