



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANKI MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Code CNR-MT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution made on June 11, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 3, 2021 (the "10 Day Notice"); and
- an order granting an extension of time to dispute the 10 Day Notice.

The Landlord named in the Tenant's application is a management company for Y.Z., the landlord named in the tenancy agreement and the owner of the rental property. Pursuant to section 64(3) of the *Act*, I find it is appropriate in the circumstances to amend the application to name Y.Z. as the Landlord. F.Z. also attended the hearing to provide translation assistance for Y.Z. Both Y.Z. and F.Z. provided a solemn affirmation at the beginning of the hearing. The Tenants did not attend the hearing.

The Landlord was given the 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling a 10 Day Notice?
2. Is the Landlord entitled to an order of possession for unpaid rent pursuant to section 55(1) of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent pursuant to section 55(1.1) of the *Act*?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. The tenancy began on March 5, 2021. Rent in the amount of \$1,600.00 per month is due on the first day of each month. The Tenants paid a security deposit in the amount of \$800.00 and a pet damage deposit in the amount of \$800.00, which the Landlord holds.

A copy of the 10 Day Notice was submitted into evidence. Written submissions provided by the Landlord indicate that the 10 Day Notice was served on the Tenants by posting a copy to the door of the rental unit on June 3, 2021. The Tenants' application acknowledged receipt of the 10 Day Notice on June 6, 2021.

The Landlord testified the Tenants paid rent after receipt of the 10 Day Notice. The Landlord confirmed the Tenants paid \$900.00 on June 16, 2021 and \$700.00 on June 21, 2021. However, the Landlord testified that rent in the amount of \$4,800.00 remains unpaid for the months of August, September, and October 2021 ($\$1,600.00 \times 3 = \$4,800.00$). The Landlord also testified that utilities totalling \$476.12 are currently outstanding.

Analysis

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

Section 26 of the *Act* confirms that a tenant must pay rent when it is due whether or not the landlord complies with this *Act*, the regulations, or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Section 46 of the *Act* permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent when a tenant does not pay rent when due.

In this case, I find the Tenants did not pay rent in full within five days after receipt of the 10 Day Notice and did not attend the hearing to provide evidence to the contrary. Therefore, I find that the Tenants' request to cancel the 10 Day Notice is dismissed without leave to reapply. I also find that the 10 Day Notice submitted into evidence complies with the form and content requirements of section 52 of the *Act*. As a result, pursuant to section 55(1) of the *Act*, I find the Landlord is entitled to an order of possession which will be effective two (2) days after it is served on the Tenants.

Further, section 55(1.1) of the *Act* confirms that the director must grant an order requiring the payment of unpaid rent when, as in this case, the notice to end tenancy complies with section 52 of the *Act* and the tenant's application to dispute the notice is dismissed. Therefore, I find the Landlord is entitled to a monetary award in the amount of \$4,800.00 for unpaid rent, which has been calculated as described above.

Pursuant to section 62(3) of the *Act*, I find it appropriate in the circumstances to order that the security and pet damage deposits held by the Landlord be retained in partial satisfaction of unpaid rent. Therefore, I find that the Landlord is entitled to a monetary order in the amount of \$3,200.00 ($\$4,800.00 - \$800.00 - \$800.00 = \$3,200.00$).

I find there is insufficient evidence before me to treat the unpaid utilities as rent pursuant to section 46(6) of the *Act*. However, the Landlord remains at liberty to apply for this and any additional relief to which they may be entitled under the *Act*.

Conclusion

The Tenants' application is dismissed without leave to reapply.

Pursuant to section 55(1), the Landlord is granted an order of possession which will be effective two days after it is served on the Tenants. The order of possession must be served on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

Pursuant to section 55(1.1), the Landlord is granted a monetary order for unpaid rent in the amount of \$3,200.00. The monetary order must be served on the Tenants. The monetary order 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: October 12, 2021

Residential Tenancy Branch