



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNRL-S, MNDCL-S, FFL
Tenant: CNR-MT, CNC-MT

Introduction

This was a cross application hearing that dealt with tenant SGIA's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice")
- More time to cancel the 10 Day Notice
- Cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice")

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An Order of Possession for unpaid rent
- A Monetary Order for damage or compensation under the Act
- A Monetary Order for unpaid rent
- Authorization to retain the tenants' security deposit
- Authorization to recover the filing fee for this application from the tenants

Preliminary Issue- Attendance

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The first landlord named in this application for dispute resolution (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without liberty to reapply.

Preliminary Issue- Service

The landlord testified that she served the tenants with her application for dispute resolution and evidence via registered mail on April 26, 2023. Registered mail receipts for each tenant were entered into evidence. I find that the tenants were deemed served with the landlords' application for dispute resolution and evidence on May 1, 2023, five days after their mailing in accordance with sections 88 and 90 of the *Act*.

The landlord testified that she served the tenants with an amendment via registered mail on May 25, 2023. Registered mail receipts for same were entered into evidence. I find that the amendment was deemed served on the tenants on May 30, 2023, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

The amendment was not filed with the Residential Tenancy Branch but was uploaded as a piece of evidence.

Preliminary Issue- Amendment

The landlord testified that her original application sought a monetary award for unpaid rent from December 2022 to April 2023. The amendment seeks to increase the monetary claim to include unpaid rent for May and June 2023.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord's original application claimed unpaid rent in the amount of \$6,000.00 for the period of December 2022 to April 2023. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$8,400.00 for the period of December 2022 to June 2023.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent and or compensation for overholding, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent and damages for overholding in the amount of \$8,400.00.

The landlord confirmed her email address for service of this Decision.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent?
2. Are the landlords entitled to a Monetary Order for damage or compensation under the Act?
3. Are the landlords entitled to a Monetary Order for unpaid rent?
4. Are the landlords entitled to retain the tenants' security deposit?
5. Are the landlords entitled to recover the filing fee for this application from the tenants?

Evidence and Analysis

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony:

- This tenancy began on October 1, 2017
- Monthly rent in the amount of \$1,200.00 is payable on the first day of each month,
- A security deposit of \$600.00 was paid by the tenants to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that the 10 Day Notice was left in the tenants' mailbox on January 16, 2023. A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice:

- Is dated January 16, 2023
- States that the tenants owe \$2,400.00 in unpaid rent that was due on January 1, 2023
- States that the tenants must vacate the subject rental property on January 29, 2023

Based on the landlord's undisputed testimony and the witnessed proof of service document entered into evidence, I find that the tenants were deemed served with the 10 Day Notice on January 19, 2023, three days after its delivery to the mailbox, in accordance with sections 88 and 90 of the *Act*.

Tenant SGIA filed to dispute the 10 Day Notice on February 20, 2023, more than five days after receiving it.

The landlord testified that the tenants have not paid any rent from December 2022 to the current date. The landlord testified that for the past year the tenants have paid their rent through "K" who sent the landlord monthly e-transfers. The landlord testified that the last e- transfer she received for the tenants' rent was for November 2022's rent.

The landlord entered into evidence an email from the landlord to tenant SGIA dated December 23, 2022 asking for December 2022's rent. The landlord entered into evidence a screenshot of a search of her e-mail inbox that occurred on March 31, 2023 (the "Search"). The Search is for K's email address and shows that K made monthly interac e-transfers in the amount of \$1,200.00 to the landlord up until October 31, 2022. No emails or interac transfer between November 1, 2022 and March 31, 2023 can be seen.

The landlord entered into evidence a copy of her interac e-transfer history from January 1, 2021 to April 3, 2023 which shows that the last interac payment received was from K and it was deposited on November 1, 2022.

Based on the undisputed testimony of the landlord, the email search and the interac e-transfer history, I find that the tenants failed to pay the rent stated as outstanding on the 10 Day Notice within five days of receiving the 10 Day Notice. The tenants did not dispute the 10 Day Notice within five days of receiving it. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by January 29, 2023. As that has not occurred, I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,200.00 on the first day of each month. Based on the undisputed testimony of the landlord, the email search and the interac e-transfer history, I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords unpaid rent from December 1, 2022 to January 29, 2023 as per the following calculation:

- December 2022: \$1,200.00
- January 1-29, 2023: $\$1,200.00 \text{ (rent)} / 31 \text{ (days in January)} = \38.7096
(daily rate) * 29 (days of tenancy in January 2023) = \$1,122.58
- **Total unpaid rent: \$2,322.58**

Residential Tenancy Policy Guideline #3 states:

If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay

compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.

As this tenancy ended on January 29, 2023 and the tenants have not yet moved out, I find that the tenants have overheld the subject rental property from January 30, 2023 to the present date. Pursuant to section 57(3) of the *Act* I find that the tenants are required to compensate the landlords for use and occupancy of the subject rental property from January 30, 2023 to June 12, 2023 as set out below:

- January 30-31, 2023: \$1,200.00 (rent) / 31 (days in January)= \$38.7096 (daily rate) * 2 (days of tenancy in January 2023) = \$77.42
- February 2023: \$1,200.00
- March 2023: \$1,200.00
- April 2023: \$1,200.00
- May 2023: \$1,200.00
- June 1-12, 2023: \$1,200.00 (rent) / 30 (days in June)= \$40.00 (daily rate) * 12 (days of tenancy in June 2023) = \$480.00
- **Total damages for overholding: \$5,357.42**

If the tenants overhold the subject rental property past June 12 2023, the landlords are at liberty to file another claim for additional damages for overholding.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenants' entire security deposit in the amount of \$600.00.

The landlord testified that she is also seeking to recover the registered mail costs she incurred during this dispute resolution process. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the *Act*. With the exception of compensation for filing the application, the *Act* does not allow an applicant to claim compensation for costs associated with participating in the dispute

resolution process. I dismiss the landlords' claim for the cost of sending registered mail to the tenants.

Conclusion

Pursuant to sections 46 and 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlords under the following terms:

| Item | Amount |
|-------------------------|-------------------|
| Unpaid rent | \$2,322.58 |
| Damages for overholding | \$5,357.42 |
| Filing Fee | \$100.00 |
| Less security deposit | -\$600.00 |
| TOTAL | \$7,180.00 |

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 12, 2023

Residential Tenancy Branch