



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCS Contractor Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: CNR MNDC OLC RPP FF
For the landlord: OPR MND MNR MNSD FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The tenants applied to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to return the tenant’s personal property, and recover the filing fee.

The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for damage to the unit, site or property, for unpaid rent or utilities, for authorization to retain all or part of the security deposit, and to recover the filing fee.

Tenant KS, and the tenant’s sister/translator, KS, the landlord and two agents for the landlord (the “agents”) attended the hearing. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence that was submitted in accordance with the rules of procedure, and testimony provided.

The landlord confirmed receiving the application of the tenant. The tenant stated that she did not receive the application of the landlord, however, did confirm that she moved out of the rental unit and into a new residence, which landlord agent, JA, testified he served their application to the tenants at by posting the landlord’s application to the door

of the tenants' new address door on October 15, 2013. Section 89 of the *Act* does not permit a monetary claim to be served by posting to the door of the respondent. As a result, **I find** that the landlord **did not** serve the tenants in accordance with section 89 of the *Act*, and as a result, **I dismiss** the landlord's monetary claim with **leave to reapply**. I am satisfied on the balance of probabilities that the tenants were aware of the landlord's application for an order of possession which may be served by posting to the door of the respondent, and as a result, I will consider the landlord's request for an order of possession.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenants indicated several matters of dispute on the Application for Dispute Resolution. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenants' request to cancel the 10 Day Notice and for the recovery of their filing fee. The balance of the tenants' application including their monetary claim is **dismissed, with leave to re-apply**. As described above, I will also consider the landlord's application for an order of possession.

Both parties requested to amend their respective applications to include the new address of the tenant. As a result, the new address of the tenant was updated for both the tenant's application and the landlord's application.

During the hearing, the tenant appeared to have difficulties due to her limited knowledge of the English language. Although the tenant's sister was assisting the tenant as her translator, the tenant's sister had to be cautioned to not change the testimony of the tenant when translating for her sister.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?
- Is the landlord entitled to an order of possession under the *Act*?

Background and Evidence

The parties disputed the start date and end date of their verbal tenancy agreement, however did agree that monthly rent was \$1,300.00 per month and that as of the date of

the hearing, the tenants continue to have some of their personal items in the rental unit. The tenant stated that the tenancy began on July 1, 2013 and that she vacated the rental unit on October 15, 2013. The landlord stated that the tenancy began on August 1, 2013 and that the tenants moved out of the rental unit on October 1, 2013. The tenant stated monthly rent was due on the 8th day of each month, while the landlord stated that monthly rent was due on the 1st day of each month. The parties agreed that a security deposit of \$650.00 was paid by the tenant at the start of the tenancy which the landlord continues to hold.

The landlord is seeking an order of possession due to the tenants continuing to have personal items in the rental unit. The tenant confirmed that the tenants continue to have some of their personal items in the rental unit, including “furniture”.

The parties did agree that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated September 13, 2013 was served by the landlord on the tenants on September 13, 2013 by posting the tenants’ door. The tenant confirmed receiving the 10 Day Notice on September 13, 2013 and disputed the 10 Day Notice on September 16, 2013, which is within the five day timeline permitted under section 46 of the *Act*. According to the 10 Day Notice, \$1,300.00 was owed for rent by the tenants as of September 1, 2013. The effective vacancy date on the 10 Day Notice is listed as September 23, 2013.

The landlord stated that the tenants did not pay rent within 5 days of being served with the 10 Day Notice. The tenant stated that she did pay rent for September 2013, however, confirmed that she did not submit any evidence to support that rent had been paid at any time during the month of September 2013. The landlord stated that the tenants have failed to pay rent for October 2013 also, and the tenant was non-responsive when asked if rent had been paid for the month of October 2013.

Analysis

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

Order of Possession – Although the due date of rent was disputed between the parties, at the latest, I find rent was due by the 8th day of the month in the amount of \$1,300.00. The effective vacancy date on the 10 Day Notice is listed as September 23, 2013. The tenants continue to have personal belongings in the rental unit, and as a result, the landlords are seeking an order of possession to regain possession of the rental unit.

Section 26 of the *Act* requires that tenants pay rent on the day that it is due in accordance with the tenancy agreement whether or not the landlord complies with the *Act*. I find the tenants provided insufficient evidence to prove that rent for September 2013 had been paid. Furthermore, the tenant was non-responsive when asked if rent for October 2013 had been paid. Therefore, **I dismiss** the tenants' application to dispute the 10 Day Notice due to insufficient evidence. I find the 10 Day Notice issued by the landlord to be valid.

Pursuant to section 55 of the *Act*, **I must** grant the landlord an order of possession. Therefore, **I grant** the landlord an order of possession effective **two (2) days** after service on the tenants. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

As the landlord was successful with the portion of his application that was before me, I find the landlord is entitled to **\$50.00** as compensation for the recovery of the filing fee. I authorize the landlord to retain \$50.00 from the tenants' security deposit of \$650.00 in full satisfaction of the recovery of the filing fee. I find the tenants' security deposit balance is \$600.00 as result of the above.

As the tenants were not successful, **I do not** grant the tenants the recovery of their filing fee.

Conclusion

The portion of the tenants' application that proceeded at this hearing has been dismissed.

The landlord is at liberty to reapply for their monetary claim which was dismissed with leave due to a service issue.

I grant the landlords an order of possession effective two (2) days after service on the tenant. This order must be served on the tenants and may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I authorize the landlord to retain \$50.00 from the tenants' security deposit of \$650.00 in full satisfaction of the recovery of the filing fee. I find the tenants' security deposit is \$600.00 as a result of the above.

For the benefit of both parties, I am including a copy of *A Guide for Landlords and Tenants in British Columbia* with my Decision written in the Punjabi and English languages.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 25, 2013

Residential Tenancy Branch

