



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M&R WHISTLER SUPERIO HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OLC, MT (Tenant's Application)
 OPR, MNR, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application, filed October 2, 2017, they requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), more time to make such an application, as well as an Order that the Landlords comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the tenancy agreement. In the Landlords' Application for Dispute Resolution they sought an Order of Possession and Monetary Order based on unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

This matter was originally scheduled for December 14, 2017 and reconvened to December 27, 2017, by Interim Decision dated December 17, 2017 (this Decision must be read in conjunction with that Decision.) Following the December 17, 2017 Interim Decision the parties were informed of this hearing date by email sent by the Branch.

Only the Landlord, T.A., called into the hearing. She gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions to me.

The Tenants also applied for dispute resolution, although he failed to call into the hearing on December 27, 2017. Accordingly, **the Tenants' application is dismissed without leave to reapply.**

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Have the Tenants breached the *Act* or tenancy agreement, entitling the Landlords to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement and which indicated the following: the tenancy began March 15, 2015; monthly rent was payable in the amount of \$800.00; and a security deposit in the amount of \$400.00 was paid at the start of the tenancy.

The Tenants failed to pay the full amount of rent for the month of October 2017. The Landlords issued a 10 day Notice to End Tenancy for non-payment of rent on October 2, 2017 in which the amount of \$435.00 was noted as due as of October 1, 2017.

Based on the *Proof of Service—Notice to End Tenancy*, I find that the Tenants were served with the Notice on October 2, 2017 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later; accordingly, I find that the Tenants were served with the Notice as of October 5, 2017.

The Notice informed the Tenants that the Notices would be cancelled if the rent was paid within five days of service, namely, October 10, 2017. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenants also did not pay the full amount of rent for November and December, nor did the Tenants pay the parking costs, such that at the time of the hearing the sum of \$1,305.00 was owed.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I

find as follows:

Having failed to call into the hearing the Tenants' application to dispute the Notice is dismissed. Pursuant to section 55 of the *Act*, the Landlords are entitled to an Order of Possession effective **two days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Based on the Landlords' undisputed testimony and evidence, I find that the Landlords have established a total monetary claim of \$1,405.00 comprised of the balance of rent owing for October, November and December 2017, the monthly parking fee and recovery of the \$100.00 fee paid by the Landlords for this application.

I order that the Landlords be permitted to retain the security deposit of \$400.00 in partial satisfaction of the claim and I grant the Landlords a Monetary Order under section 67 for the balance due of \$1,005.00. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants failed to call into the hearing and their application to dispute the Notice is dismissed. The Landlords are granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

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: December 27, 2017

Residential Tenancy Branch