



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TEAM 3000 PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, CNR, ERP, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord 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 its filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both agents attended the hearing via conference call and provided affirmed testimony. The tenant's agent, T.H. stated that he is withdrawing as agent and will not be participating in the scheduled hearing. T.H. stated that his clients have been notified prior to the scheduled hearing. T.H. then exited the conference call at 11 minutes past the scheduled hearing time.

The landlord's agent (the landlord) stated that the tenants were each personally served with the notice of hearing package and the submitted documentary evidence in person

on November 1, 2018 with a witness. The landlord confirmed that he was served with the tenants' notice of hearing package and is aware of the tenants' issues and is prepared to respond to them.

At 24 minutes past the scheduled hearing time, the tenants' application was dismissed without leave to reapply.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants and in the absence of the tenants' participation in this hearing, I order the tenants application dismissed without leave to reapply. I make no findings on the merits of the matter.

I accept the landlord's undisputed affirmed testimony that the tenants were each served with the notice of hearing package and the submitted documentary evidence in person with a witness on November 1, 2018. As such, I find that both tenants are deemed served on November 1, 2018 as per section 90 of the Act.

The hearing proceeded on the landlord's application only.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord 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.

This tenancy began on August 9, 2018 on fixed term tenancy ending on July 31, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 7, 2018. The monthly rent is \$2,700.00 payable on the 1st day of each month. A security deposit of \$1,350.00 was paid on August 7, 2018.

The landlord confirmed that the landlord served the tenants with the 10 Day Notice dated September 25, 2018 by posting it to the rental unit door on September 25, 2018. The 10 Day Notice stated that the tenants failed to pay rent of \$2,700.00 that was due on September 1, 2018 and provides for an effective end of tenancy date of October 4, 2018. The landlord has submitted a copy of a completed proof of service document dated October 4, 2018 as confirmation.

The landlord seeks an order of possession and a clarified monetary order for unpaid rent of \$8,100.00.

The landlord provided undisputed affirmed testimony that after the tenants were served with the 10 Day Notice no rent has been paid as of the date of this hearing. The landlord seeks the unpaid rent/loss of rental income for the entire 3 month period for September 2018, October 2018 and November 2018 at \$2,700.00 per month as the tenants continue to occupy the rental unit.

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 evidence of the landlord that the tenants were served with the 10 Day Notice dated September 25, 2018 by posting it to the rental unit door with a witness on September 25, 2018.

Pursuant to section 55 of the Act, I find that the tenants have failed to pay rent of \$2,700.00 for monthly rent when it was due. As such, I find that the landlord is entitled to an order of possession to be effective 2 days after service upon the tenants.

As for the monetary claim of \$8,100.00, I accept the undisputed affirmed evidence of the landlord that the tenants failed to pay rent of \$2,700.00 for September 2018 and continue to occupy the rental unit as of the date of this hearing. As such, I find that the landlord has established a claim for unpaid rent/loss of rent for the 3 month period totalling, \$8,100.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$8,200.00.

These orders must be served upon the tenants. Should the tenants fail to comply with the 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: November 15, 2018

Residential Tenancy Branch