



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR-DR-PP, FFL, CNR, FFT

Introduction

The landlord seeks an order of possession for unpaid rent and a monetary order under sections 55 and 67 of the *Residential Tenancy Act* ("Act"). The tenants seek to cancel a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") under section 46 of the Act.

The landlord filed an application on September 13, 2020 and the tenants started to file an application on September 1, 2020 but did not pay the filing fee of \$100.00 until September 11, 2020. The parties' applications were heard together on October 26, 2020. The landlord, an interpreter for the landlord, and the tenants attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is either party entitled to recovery of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application. Only relevant evidence necessary to explain my decision is referred to in this decision.

The tenancy began November 1, 2019. Rent, due on the first of the month, is \$1,000.00. The tenants paid a security deposit of \$500.00. A copy of the written tenancy agreement was in evidence.

The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent in-person on the tenants on September 1, 2020. The landlord, after consulting with the Residential Tenancy Branch, issued a new notice on September 3, 2020. The landlord had a third party serve the Notice by posting it on the door of the rental unit on September 3, 2020. The tenant testified that she discovered the Notice on the morning of September 4, 2020. Copies of both notices were in evidence.

The landlord testified that the tenants owe a total of \$4,000.00 in rent. She also testified that she wants money for damage that the tenants may have caused to the rental unit.

The tenant did not deny that they owe the landlord rent but explained that they have not paid the rent because of a litany of issues they have with the landlord involving quiet enjoyment. The landlord has allegedly subjected the tenants to verbal abuse and has called the police on them several times.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Sections 46(4) and (5) state the following:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

In this case, the second Notice was delivered to the tenants in-person on September 3, 2020. The tenants confirmed that they received the Notice on September 4, 2020. The tenants did not pay rent or make an application for dispute resolution within 5 days after

receiving the notice. An applicant can only be considered to have made an application for dispute resolution when they comply with section 59(2) of the Act, which states:

An application for dispute resolution must

- (a) be in the applicable approved form,
- (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
- (c) be accompanied by the fee prescribed in the regulations.

The tenants did not pay the \$100.00 fee required by section 59(2) of the Act, and section 8(c) of the *Residential Tenancy Regulation*, until September 11, 2020, which is a full 7 days after they received the second Notice. As such, as per section 46(5) of the Act, I find the tenants are conclusively presumed to have accepted that the tenancy ended on September 13, 2020, which is the date indicated on the Notice.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

In this case, the landlord gave the Notice and the tenants did not dispute the Notice by making an application for dispute resolution within the required time. As such, pursuant to section 55(4) of the Act, I grant the landlord an order of possession. Further, I grant the landlord an order requiring payment of the rent.

I award the landlord a monetary award of \$4,100.00, comprising the unpaid rent of \$4,000.00 and the filing fee of \$100.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy has now ended, I order that the landlord may retain the tenants’ security deposit of \$500.00 in partial satisfaction of the above-noted award.

The balance of the award, \$3,600.00, is issued by way of a monetary order which is provided to the landlord in conjunction with this decision.

Conclusion

I dismiss the tenants' application without leave to reapply.

I grant the landlord an order of possession, which must be served on the tenants and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of \$3,600.00, which must be served on the tenants. Should the tenants fail to pay the landlord the amount owed, the landlord may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims 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 Act.

Dated: October 26, 2020

Residential Tenancy Branch