



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord LM (the "landlord") testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "10 Day Notice") on the tenants on November 4, 2016 by registered mail. The landlord provided two Canada Post tracking numbers. In accordance with section 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on November 9, 2016, five days after mailing.

The landlord testified that he served the landlord's application for dispute resolution dated November 17, 2016 on the tenants on November 18, 2016 by registered mail. The landlord provided two Canada Post tracking numbers and the tenants confirmed receipt of the package. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's application.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenants have failed to pay the December rent amount and that the rental arrears as of the date of the hearing was \$3,585.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$2,868.00 to \$3,585.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenants?

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 claims and my findings are set out below.

The parties agreed on the following facts. The landlord took over this tenancy agreement from the previous landlord in July, 2016. There is no written tenancy agreement between the landlord and the tenants. The tenants continue to reside in the rental unit at the time of the hearing.

The landlord testified that the monthly rent amount is \$717.00 payable on the first of the month. The landlord gave evidence that at the time the 10 Day Notice was issued the tenancy was in arrears by \$2,868.00, the amount initially sought in the 10 Day Notice. The landlord gave evidence that the tenants owe the full rental amounts for the months of August to December.

Both the tenant who attended the hearing (the “tenant”) and the other tenant’s agent (the “agent”) gave testimony that the monthly rent has been paid in full to an unidentified individual who they understood to be the landlord’s representative who maintained an office on the premises. The tenant and the agent testified that they were of the understanding that rent payments were to be provided to the landlord’s representative or left at the office. The tenant testified that the monthly rent is \$750.00 and always paid in cash. The tenant testified that she or the other tenant had provided the monthly rent amount in full for each of the months of August through December to the landlord. The tenant stated that she was never provided with a receipt but this was the customary practice for as long as she had resided in the rental unit and simply continued the practice after the change of landlord.

Analysis

Given the conflicting testimony regarding payment of the monthly rent I first turn to a determination of credibility. I have considered the parties’ testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality, I find the evidence presented by the landlord more credible than that of the tenants. I do not find it credible that for close to half a year a tenant would provide cash to someone they are unable to identify with the expectation that they have successfully paid the monthly rent. I find the landlord's version of events that the tenants have failed to pay the rent since August, 2016 to be more credible.

In accordance with subsection 46(4) of the *Act*, the tenants must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenants are deemed to have received the 10 Day Notice on November 9, 2016. I accept the landlord's evidence that the tenants failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 19, 2016. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's evidence that the total amount of arrears for this tenancy is \$3,585.00. I issue a monetary award for unpaid rent owing of \$3,585.00 as at December 16, 2016, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises 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 in the landlord's favour under the following terms:

Rental Arrears for August 2016	\$717.00
Rental Arrears for September 2016	\$717.00
Rental Arrears for October 2016	\$717.00
Rental Arrears for November 2016	\$717.00
Rental Arrears for December 2016	\$717.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$3,685.00

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: December 19, 2016

Residential Tenancy Branch