



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, 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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenants did not attend this hearing, which lasted approximately 15 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 2, 2016 (the "10 Day Notice"), on that same date. In accordance with sections 88 of the *Act*, I find that the tenants were duly served with the landlord's 10 Day Notice on November 2, 2016.

The landlord testified that on December 2, 2016, the landlord served the tenants personally with the Notice of Direct Request Proceeding. In accordance with section 89 of the *Act*, I find the tenants were duly served with the Direct Request Proceeding documents on December 2, 2016.

The landlord testified that the Interim Decision of the Residential Tenancy Branch adjourning the Direct Request process to a participatory hearing was received on December 15, 2016. The landlord testified that the Interim Decision and Notice of Participatory Hearing were served personally on the tenants on that same date. In accordance with section 89 of the *Act*, I find that the tenants were duly served with notice of the participatory hearing on December 15, 2016.

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 and January rent amount and that the rental arrears as of the date of the hearing is \$4,390.00. 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 \$2,240.00 to \$4,390.00.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month to month tenancy began in April, 2015. The current monthly rent is \$1,075.00 payable on the first of the month. No security deposit was paid by the tenants. The tenants continue to reside in the rental unit at the time of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$2,240.00, the amount initially sought in the 10 Day Notice. The landlord gave evidence that the tenants have failed to pay the December and January rent and the current rental arrears total \$4,390.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$1,075.00. I accept the landlord's evidence that the tenants failed to pay the full rent due within the five days of service granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five 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 effective date of the 10 Day Notice, December 12, 2016.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy as of January 16, 2017, the date of the hearing, is \$4,390.00.

Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act* and a Monetary Order for unpaid rent owing of \$4,390.00 as at January 16, 2016, pursuant to section 67 of the *Act*.

Conclusion

The landlord's application is successful.

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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 in the amount of \$4,390.00 against the tenants. 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: January 16, 2017

Residential Tenancy Branch