



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNR MNSD MNDC FF

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38
- authorization to recover the filing fee for this application, pursuant to section 72

While the landlord's agent, ES, attended the hearing by way of conference call, the tenants did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package on January 27, 2017 by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on February 1, 2017, five days after its registered mailing.

The landlord's agent, ES, testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 6, 2017 ("10 Day Notice"), on January 6, 2017, by way of posting to the rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on January 9, 2017, three days after its posting.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent, utilities, or losses pursuant to section 67 of the *Act*?

Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenants pursuant to section 72 of the *Act*?

Background and Evidence

The landlord's agent, ES, testified regarding the following facts. The tenants are on a month-to-month tenancy with monthly rent in the amount of \$955.53 payable on the first day of each month. The landlord holds a security deposit in the amount of \$422.50 for this tenancy. The tenants continue to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of January 19, 2017. The landlord's agent testified that the tenants were late paying rent and their utilities, but since the Notice was issued, the tenants have paid in the rent in full, which was for use and occupancy only. The tenants still owe \$4.97 for unpaid utilities. The landlord is seeking an Order of Possession as well as monetary compensation for the unpaid utilities and recovery of the filing fee.

Analysis

The landlord's agent, ES, provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the utilities in full, within five days of being deemed to have received the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on January 19, 2017, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by January 19, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

The landlord's agents provided undisputed evidence that the tenants failed to pay the outstanding utilities in the amount of \$4.97. Therefore, I find that the landlord is entitled to \$4.97 in arrears for the above period.

The landlord continues to hold the tenants' security deposit of \$422.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit plus applicable interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two (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 allow the landlord to retain \$104.97 of the tenants' security deposit in satisfaction of the monetary claim for outstanding utilities and recovery of the \$100.00 filing fee.

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: February 22, 2017

Residential Tenancy Branch