



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes: OPR MNR

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, and a monetary order for unpaid rent, pursuant to section 67.

While the landlord attended the hearing by way of conference call, the tenants did not. The landlord 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 testified that the tenants were served with the landlord's application for dispute resolution hearing package and evidence on January 24, 2017 by way of registered mail. The landlord provided Canada Post tracking numbers in their evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application and evidence on January 29, 2017, five days after its registered mailing.

The landlord provided undisputed testimony that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), on January 9, 2017, with an effective date of January 19, 2017. The landlord testified that the 10 Day Notice was left with an adult residing at the rental address. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the landlord's 10 Day Notice.

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*?

Background and Evidence

The landlord testified regarding the following facts. The tenants are on a fixed-term tenancy until October 31, 2017, with monthly rent in the amount of \$1,600.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$800.00 for this tenancy. The landlord is uncertain whether the tenants are still residing at the rental unit.

The landlord issued the 10 Day Notice on January 9, 2017, indicating an effective move-out date of January 19, 2017. The landlord testified that when he went to deposit the post-dated January 2017 rent cheque, the bank indicated that the tenants had put a stop payment on the cheque. The landlord testified that he had not received any rent for January or February 2017. The landlord is seeking an Order of Possession for unpaid rent as well as a Monetary Order to recover the \$3,200.00 in outstanding rent.

Analysis

The landlord provided undisputed testimony at this hearing, as the tenants did not attend. The tenants failed to pay the rent 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 provided undisputed testimony that the tenants failed to pay the outstanding rent in the amount of \$3,200.00. Therefore, I find that the landlord is entitled to \$3,200.00 in rental arrears for the above period.

The landlord continues to hold the tenants' security deposit of \$800.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain 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.

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 \$800.00 of the tenants' security deposit in satisfaction of the monetary claim for outstanding rent.

I issue a \$2,400.00 Monetary Order in favour of the landlord which allows the landlord to recover the outstanding rent for this tenancy. 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: March 1, 2017

Residential Tenancy Branch