



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FFL

Introduction

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

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

The tenants did not attend this hearing, which lasted approximately 15 minutes. The landlord was represented by their agent and translator (the "landlord") who 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 a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), dated November 6, 2017 was served on the tenants by registered mail on that same date. The landlord provided a Canada Post tracking number as evidence of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 1 Month Notice on November 11, 2017, five days after mailing.

The landlord testified that the landlord's application for dispute resolution dated November 30, 2017 was sent by registered mail to each of the tenants on December 4, 2017. The landlord provided two Canada Post tracking numbers as evidence of service. I find that the tenants were served with the landlord's application for dispute resolution and evidence package in accordance with sections 89 and 90 of the *Act* on December 9, 2017, five days after mailing.

The landlord testified that they filed an amendment to their application on January 17, 2018 adding a monetary claim and the amendment was served on the tenants by registered mail on that same date. The landlord provided Canada Post tracking numbers as evidence of service. I find that the tenants were served with the amendment in accordance with sections 89 and 90 of the Act on January 22, 2018, five days after mailing.

During the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application and amendment were filed additional rent has become due. The landlord said that the actual amount of arrears as at the date of the hearing is \$3,600.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find that it could be reasonably anticipated that additional rent would become due over time, I amend the landlord's Application to increase the landlord's monetary claim from \$771.63 to \$3,600.00.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to monetary compensation as claimed?

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

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This month-to-month tenancy began several years ago. The monthly rent is \$1,200.00 payable on the first of the month. A security deposit of \$600.00 was paid by the tenants at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenants have been repeatedly paying their rent during the past year. The landlord submitted into written evidence copies of the receipts issued to the tenants for rent payment. The receipts show that the tenants habitually pay two installments of \$600.00, the first payment being made on or about the 10th of the month. The receipts show that the tenants were late in paying rent for the months of September, October and November, 2017.

The landlord said that the tenants have been repeatedly reminded that rent is due by the first. The landlord said that the tenants have failed to pay any rent since the 1

Month Notice was issued. The tenants have not paid rent for December, 2017, January and February, 2018 and the tenancy is in arrears by \$3,600.00 as at the date of the hearing.

Analysis

The landlord provided undisputed evidence as the tenants failed to attend the hearing.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant must, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or the tenancy ends on the effective date of the 1 Month Notice. I accept the evidence that the tenants have not filed an application for dispute resolution within the allotted time in response to the landlord's 1 Month Notice.

Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy will end on the corrected effective date of the 1 Month Notice, December 31, 2017. I find that the 1 Month Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. The landlord has provided documentary evidence and testimony that the tenants have been repeatedly late in paying rent. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55.

I accept the landlord's evidence that the total amount of arrears for this tenancy is \$3,600.00. I issue a monetary award for unpaid rent owing of \$3,600.00 as at February 14, 2018, 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.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the \$600.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlords 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 \$3,100.00 under the following terms:

| Item | Amount |
|----------------------------|-------------------|
| Unpaid Rent December, 2017 | \$1,200.00 |
| Unpaid Rent January, 2018 | \$1,200.00 |
| Unpaid Rent February, 2018 | \$1,200.00 |
| Filing Fee to Landlord | \$100.00 |
| Less Security Deposit | -\$600.00 |
| TOTAL | \$3,100.00 |

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: February 14, 2018

Residential Tenancy Branch