



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for a Monetary Order for unpaid rent, and for the recovery of the filing fee paid for this application.

The application was initially filed under the Direct Request Process but was adjourned to a participatory hearing to clarify the correct names of the parties.

Two agents for the Landlord (the “Landlord”) were present for the teleconference hearing and were affirmed to be truthful in their testimony. No one called in for the Tenants during the approximately 15-minute hearing.

The Landlord provided affirmed testimony that the Notice of Dispute Resolution Proceeding package, along with copies of their evidence was sent to each Tenant on September 5, 2018 by registered mail. As such, I find that the Tenants were duly served in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

At the outset of the hearing, the name of the Landlord was clarified. The Landlord was originally named as the property owner, but it was clarified that a property management company was the Landlord, as stated on the tenancy agreement submitted into evidence. The Application for Dispute Resolution was amended to correctly name the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on December 15, 2017. Monthly rent in the amount of \$1,550.00 is due on the first day of each month. A security deposit of \$775.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the Landlord.

A 10 Day Notice, dated August 20, 2018, was served to the Tenants on the same day by posting it on their door. The 10 Day Notice was submitted into evidence and states that \$1,550.00 in rent that was due on August 1, 2018 was not paid. The Landlord provided testimony that since the 10 Day Notice, rent has also not been paid for September and October 2018, for a total amount owing of \$4,650.00.

The Landlord testified that they have not received any notification that the Tenants applied to dispute the 10 Day Notice and they have also not received any payments towards the rent owing.

Analysis

I refer to Section 46(4) of the *Act* which states that a tenant has 5 days in which to dispute a 10 Day Notice or pay the outstanding rent. I accept the testimony of the Landlord that the Tenants did not dispute the 10 Day Notice and that the outstanding rent was not paid in 5 days either. As such, I find that Section 46(5) applies, and the Tenants are conclusively presumed to have accepted that the tenancy has ended.

Upon review of the 10 Day Notice submitted into evidence, I find that it is in compliance with Section 52 of the *Act*. Therefore, pursuant to Section 55(2) of the *Act*, I issue the Landlord a two-day Order of Possession.

Although the Landlord initially applied for August 2018 rent only, given the time that has passed while waiting for the hearing, I find that two additional months of rent are now due. As such, I determine that the Landlord is owed three months of rent at \$1,550.00.

I find that amending the monetary amount requested would not be procedurally unfair to the Tenants, as they are aware that rent is due on the first day of each month as stated in the tenancy agreement and that additional rent would be due if not paid.

Pursuant to Section 67 of the *Act*, I issue that Landlord a Monetary Order in the amount of \$4,650.00 for unpaid rent for August, September and October 2018. As the Landlord was successful in their Application, I also award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 72 of the *Act*, the Landlord may withhold \$100.00 from the security deposit in full satisfaction of the filing fee.

Conclusion

Pursuant to Section 67 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$4,650.00** for rent owed for August, September and October 2018. The Landlord is provided with this Order in the above terms and 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.

Pursuant to Section 72 of the *Act*, the Landlord may retain \$100.00 from the security deposit to recover the filing fee paid for the Application for Dispute Resolution.

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 23, 2018

Residential Tenancy Branch