



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MANOHER HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On November 19, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenants did not attend at any time during the 22-minute hearing. The Landlord testified that he served the Tenants with the Notice of Hearing by sending two packages via registered mail on December 8, 2018. The Landlord provided the Canada Post tracking numbers and stated that one package was returned to him; however, the other was picked up by the Tenants. I find that the Tenants have been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenants did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed evidence:

The two-year, fixed term tenancy began on April 1, 2017. The current rent is \$1,248.00 per month and is due on the first of each month. The Landlord collected and still holds a \$600.00 security deposit.

The Landlord testified that the Tenants have regularly been late and unable to make full rent payments for the length of the tenancy. Earlier in the year, the Tenants were in rental arrears and the Landlord employed Tenant JF for a time to assisting in reducing the rent balance.

As of November 1, 2018, the Tenants failed to pay rent and were in arrears for \$5,328.00. On November 2, 2018, the Landlord served a 10-Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by attaching it to the Tenants' door. The Notice had an effective date for November 12, 2018.

The Landlord stated that the Tenants have not paid any rent since the service of the Notice, did not pay rent for December 2018 or January 2019 and are still living in the rental unit. The Landlord is requesting a Monetary Order for the unpaid rental arrears, as noted in the Notice, as well as the unpaid rent for December 2018, for a total amount of \$6,576.00.

The Landlord is also requesting an Order of Possession for the rental unit.

Analysis

Based on undisputed evidence, I find that the Tenants entered into a Tenancy Agreement with the Landlord that required the Tenants to pay monthly rent of \$1,248.00 by the first day of each month and that the Tenants have not fully paid the rent prior to and including December 2018. As the Tenants are required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$6,576.00 in outstanding rent. (the amount claimed by the Landlord).

Section 46 of the Act authorizes a Landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving Notice to End Tenancy effective on a date that is not earlier than 10 days after the date the Tenants receive the Notice. The Tenants, within 5 days after receiving the Notice, may pay the overdue rent, in which case the Notice has no effect, or dispute the Notice by making an Application for Dispute Resolution. If the Tenants do not pay the rent or make an Application for Dispute Resolution, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

Section 90 of the Act specifies that a document that is posted on a door is deemed to be received on the third day after it is posted. I, therefore, find that the Tenants received the Notice on November 5, 2018.

As the Tenants are deemed to have received this Notice on November 5, 2018, the earliest effective date of the Notice is November 15, 2018. As a result, I find that November 15, 2018, is the effective vacancy date of the Notice.

I have no evidence before me that the Tenants paid their rent or applied for Dispute Resolution, therefore, I find that the Tenants accepted that the tenancy has ended. For the above reasons and because the Tenants are still occupying the rental unit, I grant the Landlord an Order of Possession.

The Landlord was successful with their Application and as such, is entitled to be reimbursed for the filing fee of \$100.00.

The Landlord has established a monetary claim, in the amount of \$6,676.00, which includes \$6,576.00 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenants' security deposit of \$600.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$6,076.00.

| Item | Amount |
|-------------|------------|
| Unpaid rent | \$6,576.00 |

| | |
|-----------------------------|-------------------|
| Filing Fee | 100.00 |
| Total monetary claim | \$6,676.00 |
| Minus Security Deposit | -600.00 |
| Total Monetary Order | \$6,076.00 |

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$6,076.00. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 17, 2019

Residential Tenancy Branch