



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On November 9, 2018, the Landlord applied for a Direct Request proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "Act"), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On November 22, 2018, the Landlord's Application was set down for a Dispute Resolution Proceeding on January 8, 2018 at 9:30 AM.

The Landlord attended the hearing and R.B. also attended as an agent for the Landlord; however, the Tenants did not attend the hearing. All in attendance provided a solemn affirmation.

The Landlord confirmed that he served each Tenant the Notice of Hearing package and evidence by registered mail (the registered mail tracking numbers are on the first page of this decision) on November 23, 2018. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were deemed to have received the Notice of Hearing package and evidence five days after they were mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for the unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord stated that the tenancy started on April 24, 2014 and that rent was established at \$950.00 per month, due on the fifteenth day of each month. However, the Landlord advised that rent was increased to \$1,200.00 per month by mutual agreement starting February 2018. A security deposit of \$450.00 was paid.

The Landlord submitted that the Tenants did not pay October 2018 rent in full. He stated that he served the Notice to the Tenants by hand on November 3, 2018 which indicated that \$1,200.00 was outstanding on October 15, 2018. The effective end date of the Notice was noted as November 13, 2018. The Landlord advised that the Tenants did not pay the rent for November or December 2018 either.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were served the Notice on November 3, 2018. According to Section 46(4) of the *Act*, the Tenants have 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on November 8, 2018, the Tenants must have paid the rent in full or made an Application to dispute the Notice by this day at the latest. However, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being served the Notice. Furthermore, the Tenants did not dispute the Notice within the required timeframe.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 52 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a Monetary Order in the amount of **\$3,600.00**, which is comprised of rent owed for the months of October, November, and December 2018.

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

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
October 2018 – Outstanding rent	\$1,200.00
November 2018 – Outstanding rent	\$1,200.00
December 2018 – Outstanding rent	\$1,200.00
Filing fee	\$100.00
Total Monetary Award	\$3,700.00

Conclusion

I grant an Order of Possession to the Landlord that is 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.

The Landlord is provided with a Monetary Order in the amount of **\$3,700.00** 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.

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 8, 2019

Residential Tenancy Branch