



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

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 sections 46 and 55; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified that they received the landlord's notice of dispute resolution package via registered mail but could not recall on what date. The landlord testified that he did not recall on what date he sent the notice of dispute resolution. I find that the tenants were served with the notice of dispute resolution package in accordance with section 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in March of 2018 and is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. A security deposit was not paid by the tenants to the landlord.

The landlord testified that on October 16, 2018 he posted a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of October 27, 2018 (the "10 Day Notice") on the tenants' door. The tenants confirmed receipt of the 10 Day Notice on October 16, 2018.

The landlord testified that he has not received rent for October 2018- January 2019 from the tenants and that \$150.00 from September 2018's rent is still outstanding. The tenants testified that they paid October 2018's rent but have not paid rent for November 2018- January 2019. The tenants testified that they paid \$500.00 on September 26, 2018 and \$650.00 on September 28, 2018 which satisfied their outstanding balance for September 2018 and paid for October 2018's rent. The landlord testified that the payments made in September 2018 were for September 2018's rent.

Neither party entered documentary evidence regarding what amount of rent was paid and when. Both parties testified that they have text messages proving when rent was paid and for what month it was paid. At the hearing I allowed both parties 24 hours to upload text message evidence regarding when rent was paid.

I reviewed the text message evidence entered by both parties. The text messages show a long history of late rent payments from the tenants to the landlord. The following is the relevant excerpts from a September 26-28, 2018 text conversation:

- Tenant- "Good afternoon [landlord], just wanted to inform you that I will be dropping off another \$400 at the office for you today and then the rest on Friday"
- Landlord- "Ok thx I look forward to you catching up on your rent."
- Tenant- "That makes the 2 of us"
- Tenant- "Rent will be caught up tomorrow then from there it will stay caught up"

The tenants testified that they did not file to dispute the 10 Day Notice. The tenants testified that they did not pay any rent after receiving the 10 Day Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenants by posting a copy on the tenants' door. I find that the 10 Day Notice was served on the tenants on October 16, 2018 in accordance with section 88 of the *Act*.

Based on the text message evidence entered by both parties and the landlord's testimony, I find that the tenants did not pay any rent for October 2018. In the text messages the tenants clearly acknowledge that the rent money paid at the end of September was for September's rent as they stated sometime between September 26-28, 2018 that "Rent will be caught up tomorrow then from there it will stay caught up".

The tenants failed to pay the October 2018 rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by October 27, 2018, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the landlord was successful in his application, I find that he is entitled to recover the \$100.00 filing from the tenants, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord is the amount of \$100.00.

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.

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 09, 2019

Residential Tenancy Branch