



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPRM-DR ERP MNDCT OLC PSF RP RR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary order pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants applied for:

- An order for repairs and emergency repairs pursuant to section 33;
- A monetary order pursuant to section 67;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order that the landlord provide services or facilities pursuant to section 65; and
- Authorization to reduce the rent for service or facilities not provided pursuant to section 65.

The tenants did not attend this hearing which lasted approximately 15 minutes. The landlord attended and was given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. At the outset of the hearing another party called into the teleconference line but were confirmed that they were not parties to the present hearing and directed to leave the conference.

The landlord testified that they issued a 10 Day Notice to End Tenancy on November 2, 2018 by posting on the rental unit door on that date. The landlord submitted a signed

Proof of Service form as evidence of service. I find that the 10 Day Notice was deemed served on the tenants on November 5, 2018, five days after posting in accordance with sections 88 and 90 of the *Act*.

The landlord said that they served the Notice of Direct Request proceeding on the tenants by registered mail on November 20, 2018 by registered mail. The landlord provided a Canada Post tracking number as evidence of service. Based on the evidence I find that the tenants were deemed served with the Notice of Direct Request Proceeding on November 25, 2018, five days after mailing, in accordance with sections 89 and 90 of the *Act*.

The landlord testified that they served the Notice of Reconvened Hearing dated November 30, 2018 by registered mail sent on that date. The landlord provided a Canada Post tracking number as evidence of service. Based on the evidence I find that the tenants were deemed served with the Notice of Hearing on December 5, 2018, five days after mailing, in accordance with sections 89 and 90 of the *Act*.

At the outset of the hearing the landlord made an application requesting to amend the monetary amount of their claim. The landlord said that additional rent has become due and owing since the application was filed. As I find that additional rent becoming due is reasonably foreseeable, in accordance with section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, I allow the landlord to increase the monetary claim from \$5,050.00 to \$10,350.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to recover the filing fee from the tenants?
Are the tenants entitled to any of the relief sought?

Background and Evidence

The landlord provided undisputed evidence as the tenants did not attend the hearing. This periodic tenancy began in April 2018. The monthly rent is \$2,650.00 payable by the first of each month. A security deposit of \$1,325.00 was paid at the start of the tenancy and is still held by the landlord.

The landlord testified that the tenants failed to pay rent for the months of October, November and December, 2018 and January 2019. The landlord said that the tenants did not make any payment after the 10 Day Notice of November 2, 2018 was issued nor did they file an application for dispute resolution. The landlord said that the arrears as at January 11, 2019, the date of the hearing, is \$10,350.00.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am on this date. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the 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.

Consequently I dismiss the tenants' application without leave to reapply.

I accept the landlord's evidence that the rent for this tenancy is \$2,650.00 and that the tenants have failed to pay rent for several months. I accept the evidence of the landlord that the tenants did not pay the rent in full after the 10 Day Notice of November 2, 2018 was issued, nor did they file an application to dispute that notice. Consequently, in accordance with section 46(5) of the Act, I find that the tenants are conclusively presumed to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, November 15, 2018. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed I issue an Order of Possession effective 2 days after service.

I accept the evidence that the total amount of arrears for this tenancy is \$10,350.00. I issue a monetary award in the landlord's favour for unpaid rent of \$10,350.00 as at January 11, 2019, the date of the hearing, pursuant to section 67 of the Act.

As the landlord's application was successful the landlord is entitled to recover their filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the Act, I allow the landlord to retain the tenant's security deposit of \$1,325.00 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord 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 \$9,125.00 which allows the landlords to recover unpaid rent and the filing fee for their application less the security deposit.

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 11, 2019

Residential Tenancy Branch