



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S MNDCL-S 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 of the *Act*;
- a Monetary Order for unpaid rent and compensation for damage or loss, and authorization to retain the security deposit in partial satisfaction of this monetary claim, pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 10:02 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing, assisted by her son N.K, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Amendment of Landlord's Application

I note that the landlord's application transposed the last and middle names of tenant N.F. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's Application to provide the correct legal last name for tenant N.F.

Preliminary Issue – Service of Documents

As only the landlord attended the hearing, I asked the landlord to confirm that she had served each of the tenants individually with the Notice of Dispute Resolution Proceeding package, which includes the landlord's Application for Dispute Resolution, for this hearing. The landlord testified that on January 15, 2019 she personally served two individually-addressed Notice of Dispute Resolution Proceeding packages to only one of the tenants, tenant N.F., as tenant K.R. was not at the rental unit at the time of service.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedures sets out the requirement of an applicant to demonstrate proof of service to both respondents named in an application:

3.5 Proof of service required at the dispute resolution hearing:

*At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that **each respondent** was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.*

[My emphasis added]

For the purposes of monetary claims, section 89(1) of the *Act* requires that a landlord serve a tenant with notice of their claim either in person or by registered mail. Section 89(1) of the *Act* does not permit a landlord who is seeking a monetary order to serve the tenant by serving an adult who resides with the tenant. Therefore, I find the landlord has not served **both** tenants with the Notice of this hearing in accordance with the *Act* for the purposes of a monetary order and, as a result, I dismiss the landlord's monetary claim with leave to reapply.

For the purposes of seeking an order of possession pursuant to section 55 of the *Act*, section 89(2) of the *Act* allows a landlord to serve a tenant with notice of their claim by leaving it at the tenant's residence with an adult who resides with the tenant. Therefore, I find that the landlord served both tenants with the Notice of this hearing in accordance with section 89(2) of the *Act*, for the purposes of seeking an order of possession.

As a result, I have proceeded with consideration of the landlord's request for an order of possession for unpaid rent or utilities pursuant to section 55 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to recover the cost of the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence. The landlord confirmed the following details pertaining to this tenancy:

- This month-to-month tenancy began June 30, 2018.
- Current monthly rent of \$1,500.00 is payable on the first of the month.
- At the beginning of the tenancy, the tenants paid a security deposit of \$750.00 and a pet deposit of \$500.00, which continue to be held by the landlord.

The landlord confirmed that the tenants continued to reside in the unit at the time of the hearing.

The landlord testified that on January 1, 2019, the tenants failed to make the rent payment when it was due. The landlord personally served tenant N.F. with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) on January 4, 2019.

The landlord submitted into documentary evidence a copy of the 10 Day Notice. The 10 Day Notice is signed and dated by the landlord on January 4, 2019 and provides: the address of the rental unit; an effective vacancy date of January 14, 2019 for when the tenants would be required to move out of the rental unit; and the grounds for ending the tenancy due to rent owed of \$1,500.00 and utilities owed of \$203.10 as of January 1, 2019.

The landlord testified that on January 15, 2019 the tenants provided two cheques, one for the \$1,500.00 in rent owed for January and one for \$200.00 towards utilities owed. As well, the tenants signed a Mutual Agreement to End Tenancy with an agreed upon move out date of February 1, 2019. The landlord stated that she took the cheques to the bank and was told by the bank representative that the tenants had closed the bank account and therefore the cheques were not cashable.

The landlord testified that on January 30, 2019, the tenants made two cash payments of \$300.00 and \$200.00, for a total payment of \$500.00 towards the \$1,500.00 in rent arrears owed for January 2019. The landlord stated that the tenants requested to use their security and pet damage deposits towards their owed rent, however, the landlord testified that she did not agree to this. Therefore, the landlord claimed that the tenants are still in rental arrears of \$1,000.00 for January 2019. Further to this, the landlord testified that the tenants continue to reside in the rental unit and have not made any rent payments for February 2019, which is now overdue.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

As the tenants did not attend the hearing, based on the unchallenged testimony of the landlord, and the documentary evidence submitted, I find that the tenants were obligated to pay monthly rent in the amount of \$1,500.00 on the first day of the month, as established in their agreed upon tenancy agreement.

Further to this, I find that there is no evidence before me to conclude that the tenants had any other right to withhold rent for January or February 2019, and therefore the tenants remained obligated to pay rent for these months when due.

I accept the testimony before me that the 10 Day Notice was personally served on the tenants by the landlord on January 4, 2019.

In considering this matter, I have reviewed the landlord's 10 Day Notice to ensure that the landlord has complied with the requirements of section 52 of the *Act*. I find that the 10 Day Notice complies with the form and content requirements of section 52 of the *Act* as it is signed and dated by the landlord; provides the address of the rental unit; states the effective date of the notice; and explains the grounds for the tenancy to end.

I accept the evidence before me that the tenants failed to pay the full rent due or dispute the 10 Day Notice within the five-day time limit allowed under section 46(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, January 14, 2019.

In light of the above, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

As the landlord was successful in obtaining an order of possession, I find that the landlord is entitled to recover the cost of the \$100.00 filing fee from the tenants. I order the landlord to retain \$100.00 from the tenants' security deposit in satisfaction of the recovery of the filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**.

The landlord must serve this Order on the tenants as soon as possible. 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.

The landlord is ordered to retain \$100.00 from the tenants' security deposit in satisfaction of the recovery of the filing fee for this Application.

The landlord's monetary claim is dismissed with leave to reapply.

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: February 05, 2019

Residential Tenancy Branch