Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FERN NORTH SHORE LTD
and [tenant name suppressed to protect privacy]

DECISION

<u>Dispute Codes</u>   OPR MNR FF

<u>Introduction</u>

This hearing dealt with the Landlord's Application by Direct Request Proceeding, made on January 11, 2019, which was adjourned to a participatory hearing (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord was represented at the hearing by A.Q. and A.J.D., agents. The Tenants attended the hearing and were represented by N.S., their daughter. All in attendance provided a solemn affirmation.

On behalf of the Landlord, A.Q. testified the Notice of Dispute Resolution Hearing and documentary evidence was served on the Tenants by registered mail on January 23, 2019. N.S. acknowledged receipt on behalf of the Tenants.   Pursuant to section 71 of the *Act*, I find the Application package and documentary evidence were sufficiently served for the purposes of the *Act*. The Tenants did not submit documentary evidence in response to the Application.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties confirmed the tenancy began on November 1, 2017. Rent in the amount of $2,647.73 per month, which includes parking, is due on or before the first calendar day of each month. The Tenants also paid a security deposit in the amount of $1,286.36, which the Landlord holds.

On behalf of the Landlord, A.Q. testified the Tenants have not paid rent in full since September 2018. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 5, 2018 (the "10 Day Notice"). At that time, rent in the amount of $10,976.38 was outstanding.   A.Q. testified the 10 Day Notice was served on the Tenants by registered mail. N.S. acknowledged receipt of the 10 Day Notice on behalf of the Tenants.

In addition, A.Q. testified rent was also not paid when due on January 1, February 1, and March 1, 2019. Currently, rent in the amount of $18,919.57 is outstanding, and the Tenants continue to occupy the rental unit.

In reply, N.S. acknowledged the Tenants have not paid rent as claimed. However, she testified that her father has experienced difficult financial circumstances and her mother has experienced significant illness, which have prevented the Tenants from paying rent.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord sought an order of possession. In this case, A.Q. testified, and I find, that the 10 Day Notice was served on the Tenants by registered mail on December 5, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 5 days later. I find the Tenants are deemed to have received the 10 Day Notice on December 10, 2018. Accordingly, pursuant to section 46(4) of the

Act, the Tenants had until December 15, 2018, to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. The Landlord testified the Tenants have not paid rent and continues to reside in the rental unit. The Tenants did not dispute the 10 Day Notice, and N.S. acknowledged rent was not paid as claimed. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenants.

In addition, section 26(1) of the *Act* confirms:

> *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this* Act*, the regulations or the tenancy agreement, unless the tenant has a right under this* Act *to deduct all or a portion of the rent.*

> [Reproduced as written.]

In light of the acknowledgement by N.S., I find the Tenants did not pay rent as claimed by the Landlord, and that $18,919.57 remains outstanding. Therefore, I find the Landlord has established an entitlement to unpaid rent in the amount of $18,919.57. Having been successful, the Landlord is also entitled to recover the $100.00 filing fee paid to make the Application. In the circumstances, I also find it appropriate to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of $17,733.21, which has been calculated as follows:

Claim	Amount
Unpaid rent:	$18,919.57
Filing fee:	$100.00
LESS security deposit:	($1,286.36)
TOTAL:	**$17,733.21**

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenants. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of $17,733.21. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 7, 2019

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Residential Tenancy Branch