



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNRL FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord attended the hearing by way of conference call, the tenants did not. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package on January 22, 2019 by way of registered mail. The landlord provided a Canada Post tracking number in his evidentiary materials. In accordance with section 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's application on January 27, 2019, five days after its registered mailing.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 17, 2018 ("10 Day Notice"), on December 17, 2018, by personally serving the tenant DK. In accordance with section 88 of the *Act*, I find that the tenants were duly served with the landlord's 10 Day Notice on December 17, 2018.

At the beginning of the hearing, the landlord indicated that he was withdrawing his monetary claim for unpaid rent. Accordingly, the landlord's monetary claim for unpaid rent was cancelled.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This fixed term tenancy began on October 1, 2018, with monthly rent in the amount of \$1,300.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$200.00 for this tenancy.

The landlord issued the 10 Day Notice on December 17, 2018, indicating an effective move-out date of December 31, 2018. The landlord testified in the hearing that the tenants failed to pay the full monthly rent for December 2018. Since the 10 Day Notice was issued, the tenants made a payment of \$600.00 on January 18, 2019, and \$650.00 payment on February 15, 2019. The landlord is seeking an Order of Possession as the tenants still reside there, and have not paid the outstanding rent.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on December 31, 2018, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 31, 2018. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenants have not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act* so the landlord may take full possession of the premises.

As the landlord was successful in their application, I find that he is entitled to recover the filing fee for this application.

The landlord continues to hold the tenants' security deposit of \$200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenants' security deposit in satisfaction of the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenant(s) 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 find that the landlord is entitled to recover the \$100.00 filing fee for this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the filing fee for this application.

The landlord withdrew his monetary claim for unpaid rent.

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

Residential Tenancy Branch