



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPRM-DR CNR LRE OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

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

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70.

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 11:16 a.m. to enable the tenants to participate in this scheduled hearing for 11:00 a.m. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

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.

As the tenants did not attend this hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that the tenants were served with the landlord's application and evidentiary materials by way of registered mail on May 24, 2019. The landlord provided proof of service in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find the tenants deemed served with the landlord's application and evidence on May 29, 2019, five days after mailing.

The landlord provided undisputed testimony that the tenants served with a 10 Day Notice for Unpaid Rent by way of posting the Notice on the tenant's door on May 8, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on May 11, 2019, 3 days of postings.

Preliminary Issue – Landlord's Late Evidence

The landlord submitted additional evidence as part of her application, but this evidence was not received by the Residential Tenancy Branch (the RTB) until June 24, 26, and 27, 2019.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was June 13, 2019.

This evidence was not served within the timelines prescribed by rule 3.14 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party.

Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

I find that the landlord did not provide sufficient proof of service to establish that his evidence was served upon the tenants within the timelines prescribed by rule 3.14 of the Rules. On this basis I find that there is undue prejudice to the tenants by admitting the landlord's evidence. Thus I exercise my discretion to exclude the additional evidence submitted by the landlord.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This fixed-term tenancy began on January 26, 2019. Monthly rent is currently set at \$1,835.00, payable on the first day of the month. The tenants had paid the landlord a security deposit in the amount of \$915.00, which the landlord still holds.

The landlord issued the tenants a 10 Day Notice for Unpaid Rent on May 8, 2019 as the tenants' May 2019 payment cheque was not cleared due to insufficient funds. The tenants eventually submitted a second payment for May 2019 rent on May 21, 2019, for use and occupancy only. The landlord testified that the tenant has not paid any rent for June 2019.

The landlord is requesting monetary compensation as follows:

Unpaid Rent for June 2019	\$1,835.00
Cleaning Fee	315.00
Cost of Replacing Keys	21.00
Cost of Replacing FOBS	150.00
Parking Decal	50.00
Fines levied by strata	200.00

Filing Fee	100.00
Total Monetary Award Requested	\$2,671.00

The landlord confirmed that the tenants have not vacated the rental unit. The landlord testified that the landlord has been levied fines totalling \$200.00 for the tenants' contravention of strata bylaws that prohibit smoking. The landlord included the Notices of Infraction as well as confirmation of the strata's decision to assess the landlord fines totalling \$200.00 for the bylaw infractions.

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, May 21, 2019. As the tenants have not moved out, 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.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *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.*

The landlord provided undisputed evidence that the tenants failed to pay the rent in full for June 2019. Therefore, I find that the landlord is entitled to \$1,835.00 for the outstanding June 2019 rent.

I find that the landlord provided sufficient evidence to support that the strata had made a determination that the tenants had failed to comply with strata bylaws, and as a result, the landlord suffered a monetary loss of \$200.00. Accordingly, I allow the landlord a \$200.00 monetary order for reimbursement of the fines levied against her rental unit.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. As the tenants have yet to vacate the rental unit, I find the remaining portions of the landlord's application to be premature. Accordingly, I dismiss the remainder of the landlord's application with leave to reapply.

The landlord continues to hold the tenants' security deposit in the amount of \$915.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenants.

Conclusion

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

I grant an Order of Possession to the landlord effective **two (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 \$1,220.00 Monetary Order in favour of the landlord as set out in the table below:

Item	Amount
Unpaid Rent for June 2019	\$1,835.00
Strata Fines	200.00
Recovery of Filing Fee	100.00
Less Security Deposit Held by Landlord	-915.00
Total Monetary Order	\$1,220.00

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.

The remainder of the landlord's monetary application 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: July 4, 2019

Residential Tenancy Branch