



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNRL-S OPC OPR

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 and cause pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent on or about July 11, 2019. The landlord provided two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that each of the tenants is deemed served with the landlord's materials on July 16, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

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 their filing fee from the tenants as claimed?

Background and Evidence

The current monthly rent for this periodic tenancy is \$1,534.42, payable on the first day of each month. There is a security deposit of \$675.00 currently held by the landlord for this tenancy.

The landlord gave evidence that the tenants have been habitually late in paying the full rent and as of the date of the hearing there is an arrear of \$4,740.94. The landlord submitted into evidence copies of correspondence between the parties where the tenants acknowledge that they have not paid rent in full by the due date and a 10 Day Notice to End Tenancy dated June 6, 2019.

There was a previous proceeding under the file number on the first page of this decision where the landlord applied for an Order of Possession and Monetary Order through a Direct Request proceeding. The presiding adjudicator dismissed the landlord's application for a monetary award with leave to reapply and the balance of the previous application was dismissed without leave to reapply.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated June 6, 2019. The 1 Month Notice was served on the tenants by registered mail sent on or about that date. The landlord submitted into evidence copies of the Canada Post receipts and tracking numbers. The reason provided on the 1 Month Notice for the tenancy to end is that the tenants have been repeatedly late in paying rent.

Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. The 10 Day Notice of June 6, 2019 and the filing fees for the previous hearing were the subject of the final decision issued by the adjudicator on June 26, 2019. In the decision the issues of the 10 Day Notice and filing fee are dismissed without leave to reapply. I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another decision maker appointed under the *Act*. I find that the landlord's claim for the monetary award was dismissed with leave to reapply and therefore I have jurisdiction to consider this issue.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within 10 days, dispute the notice by filing an application for dispute

resolution with the Residential Tenancy Branch. I accept the landlord's evidence that the 1 Month Notice was served by registered mail sent on or about June 6, 2019. Accordingly, I find that the tenants are deemed served with the 1 Month Notice on June 11, 2019, pursuant to sections 88 and 90 of the *Act*. Therefore, the tenants had 10 days from June 11, 2019 to file an application for dispute resolution. I find that the tenants have failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, July 31, 2019.

I find that the landlord's 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice. I am satisfied with the evidence submitted that there is a basis for the 1 Month Notice, specifically the repeated late payment of rent by the tenants. I find that the evidence shows the tenants have been late in paying the full amount of rent for March, April, May and June, 2019. 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 1 Month Notice has passed, I issue a 2 day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the evidence I accept that monthly rent for this tenancy is \$1,534.42 and the tenants were obligated to pay that amount by the first of each month in accordance with the signed tenancy agreement and subsequent rental increases. I accept the evidence that the tenants have failed to pay the rent and that there is a rental arrear of \$4,740.94 as at the date of the hearing. Accordingly, I issue a monetary award in the landlord's favour in that amount as against the tenants.

I find that the landlord's claim for postage and delivery costs are not losses attributable to the tenants but simply the cost of pursuing and application for dispute resolution and dismiss this portion of the landlord's application.

As the landlord was mostly successful in their application they may recover their filing fee for this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the \$675.00 security deposit 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 tenant(s)**. Should the tenant(s) or any occupant 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 \$4,165.94, allowing the landlord to recover the rental arrear and the filing fee for this application and retain the security deposit for the tenancy. 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: September 13, 2019

Residential Tenancy Branch