



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

This hearing was convened as a result of the Landlord's application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order of possession, further to the Landlord having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated June 12, 2019 ("10 Day Notice"). The Landlord also applied for a monetary order for recovery of the unpaid rent in the amount of \$3,625.65, and for recovery of the \$100.00 Application filing fee.

An agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony, but no one attended for the Tenants. The teleconference hearing was open for 30 minutes, and no one called in on the Tenants' behalf. The Agent said she served the Tenants with the Application and documentary evidence via registered mail on July 26, 2019. She submitted copies of the registered mail tracking numbers as proof of service.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent provided her evidence orally and asked and answered questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Agent provided her email address at the outset of the hearing and confirmed her understanding that the Decision would be emailed to her and mailed to the Tenants, with any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Agent said that the periodic tenancy began on January 1, 2019, with a monthly rent of \$855.00, due on the first day of each month. The Agent said she was unsure if the Tenants paid a security deposit or the first month's rent, because she said the building manager at the time stole the rent money for the building from the Landlord. However, the Agent said they had a new building manager in February 2019 and had the Tenants sign a tenancy agreement on February 1, 2019.

The Agent said that the Tenants never paid any rent, but that they continue to live in the rental unit. The Agent said she issued the 10 Day Notice, because the Tenants owed the Landlord \$3,625.65 in unpaid rent at that time.

The Agent said the Tenants may have paid rent in January 2019; however, the building manager at that time stole the rent proceeds, so the Landlord does not know if or how much the Tenants paid that first month of the tenancy. The Agent said that as a result, the Landlord is not claiming for unpaid rent for January 2019.

The Agent said she served the Tenants with the 10 Day Notice by registered mail on June 12, 2019, and she submitted a proof of service form to confirm this, as well as a copy of the Canada Post registered mail tracking number for the mailing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it

is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[emphasis added]

The Tenants did not pay anything toward the rent owing after they received the 10 Day Notice, and they did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, and should have vacated the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to sections 88 and 90 of the Act, I find that the Tenants were deemed served with the 10 Day Notice on June 17, 2019, five days after it was mailed to the rental unit.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Agent said the Landlord was owed \$3,625.65 in unpaid rent as of June 1, 2019, assuming the Tenants paid their security and pet damage deposits in January 2019.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of June 22, 2019. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenants. As

noted above, the 10 Day Notice was deemed served on the Tenants on June 17, 2019. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically

corrected to June 27, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenants did not attend the hearing to provide testimony as to why the rent was not paid, and they did not provide any documentary evidence establishing that they had a right under the Act to deduct all or a portion of the \$3,625.65 in rent owed for the five months prior to June 1, 2019. Therefore, the Landlord's Application for an order of possession is granted, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenants have not paid full rent since January 2019, the order of possession will be effective two days after service of the order on the Tenants.

Based on the evidence before me and pursuant to section 67 of the Act, I award the Landlord a monetary order for unpaid rent owing to him by the Tenants in the amount of \$3,625.65. I also

award the Landlord recovery of the \$100.00 Application filing fee for a total monetary order of \$3,725.65. There is no evidence before me that the Tenants paid the Landlord a security or pet damage deposit, so I do not authorize a set off of the deposits against the monetary award.

Conclusion

The undisputed evidence before me is that the Tenants did not pay the Landlord any rent for more than the last eight months, so the Landlord's Application for an Order of Possession is granted. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenants.

The Landlord is provided with this Order in the above terms and the Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I award the Landlord with \$3,625.65 of unpaid rent owing for the months of February through June 2019, pursuant to section 67 of the Act, and \$100.00 as recovery of the Application filing fee. The Landlord is awarded a total Monetary Order of **\$3,725.65**.

This decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 26, 2019

Residential Tenancy Branch