



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

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, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's manager (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenants were each served with the application for dispute resolution via registered mail on August 29, 2019. The Canada Post Tracking Numbers to prove these registered mailings were entered into evidence. I find that the tenants were deemed served with the landlord's application for dispute resolution on September 3, 2019, five days after their mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Amendment

The landlord's original application claimed unpaid rent in the amount of \$4,300.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenants has increased to \$6,000.00.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") state that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$6,000.00.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on February 1, 2019 and is currently ongoing. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. The tenants provided the landlord with a cheque for their security deposit and pet damage deposit, but the cheque was returned due to insufficient funds. The tenants did not pay either their security or pet damage deposits. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that on August 6, 2019 the tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of August 15, 2019 (the "10 Day Notice").

The landlord testified that the tenants made the following rent payments between February 1, 2019 and October 22, 2019.

Date	Rent Paid in Cash
February 20, 2019	\$800.00
March 15, 2019	\$500.00
March 15, 2019	\$200.00
April 3, 2019	\$100.00
May 7, 2019	\$500.00
June 17, 2019	\$500.00
July 15, 2019	\$200.00
July 23, 2019	\$200.00
Total	\$3,000.00

The landlord testified that the tenant has not made any rent payments since July 23, 2019. The landlord entered into evidence a rent ledger confirming the above testimony.

The tenants did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenants. I accept the landlord's undisputed testimony that the tenants were personally served with the 10 Day Notice on August 6, 2019.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is August 16, 2019. I find that the corrected effective date of the 10 Day Notice is August 16, 2019.

Based on the undisputed testimony of the landlord, I find that the tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by August 16, 2019, as that has not occurred, 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(1) of the *Act* states that tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,000.00 on the first day of each month. Based on the testimony of the landlord and the ledger entered into evidence, I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords \$6,000.00 in unpaid rent from February to October 2019.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

As the landlord did not receive a security deposit or pet damage deposit from the tenants, I dismiss the landlord's application to retain the above deposits from the tenants.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants 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 to the landlord in the amount of \$6,100.00.

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, 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: October 22, 2019

Residential Tenancy Branch