



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$5,396.57 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlords 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 landlords and I were the only ones who had called into this teleconference.

The landlords testified that the tenants was served the notice of dispute resolution form and supporting evidence package via registered mail on August 14, 2019. The landlords provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision.

The landlords amended their application. The landlords testified that the tenants were personally served the amendment to notice of dispute resolution form on September 16, 2019.

In accordance with sections 88, 89 and 90 of the Act, I find that the tenants are deemed served with:

- 1) the notice of dispute resolution form and supporting evidence on August 19, 2019, five days after the landlords mailed it; and
- 2) the amendment to the notice of dispute resolution on September 16, 2019.

Preliminary Issue

Tenant LA is tenant JA's eleven-year old daughter. The landlords agreed that she is not properly a party to this action, despite her name appearing on the tenancy agreement. The landlords agreed that she should be removed as a party to this application.

Accordingly, pursuant to Rule of Procedure 4, I order that the notice of dispute resolution be amended to remove tenant LA as a party. Hereinafter I will refer to tenant JA as the "tenant".

Issue(s) to be Decided

Are the landlord entitled to:

- 1) a monetary order in the amount of \$5,396.57;
- 2) recover their filing fee?

Background and Evidence

The landlords seek the order of possession pursuant to a 10 Day Notice to End Tenancy (the "**Notice**") served July 4, 2019. Within five days of being deemed served, the tenant unsuccessfully applied to dispute the Notice, which came to a hearing before me on September 3, 2019. I issued written reasons for my decision following that hearing. I found:

I find that tenant JA has failed to pay monthly rent and utilities for July, August, and September 2019. I find that there is no basis under the Act for this non-payment.

On this basis I find that the Notice was validly issued, and that the tenant owes the landlord \$5,340.00 in rent and utilities for July, August, and September 2019.

Section 55 of the Act states:

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 Notice complies with section 52.

Accordingly, I grant the landlord an order of possession against the tenant effective September 15, 2019.

I decline to make any order regarding the repayment of the outstanding rent, as no application for repayment is before me.

The landlords testified that to date the tenant has paid no part of the rental arrears.

The landlords testified that at the end of the tenancy the parties entered into a written agreement whereby the landlords would retain \$650 of the \$850 security deposit as compensation for damage to the tenant. They testified they returned the balance (\$200) to the tenant.

The landlords seek a monetary order for \$5,496.57 representing the following:

Rental arrears (July to September 2019)	\$5,340.00
Filing Fee	\$100.00
Reimbursement for cost of registered mail	\$56.57
Total	\$5,496.57

Analysis

I adopt the findings set out in my previous decision. I find that the tenant has failed to pay the landlords \$5,340 in rent for the months of July, August and September 2019.

Pursuant to section 26 of the Act, the tenant is obligated to pay rent as it become due. Accordingly, I order that the tenant pay the landlords this amount.

Section 38(4) of the Act permits the landlords to retain a portion of the security deposit in compensation for damage to the rental unit, as the tenant agreed in writing that they may do so.

There is no basis under the Act which allows landlord to recover the costs and disbursements (such as legal fees, photocopying costs, or mailing costs) associated with bringing a claim to the Residential Tenancy Branch. As such, I decline to order that the tenant repay the landlords their registered mail costs.

Pursuant to section 72 of the Act, as the landlords have been substantially successful, I order that they may recover the cost of their filing fee from the tenant.

Conclusion

I order that the tenant pay the landlords \$5,440, representing repayment of the arrears from July to September 2019, and the filing fee. If the tenant does not comply with this order, the order may be filed and enforced in the Provincial Court of British Columbia.

I order that the landlords serve a copy of this decision and attached order on the tenant in accordance with section 88 of the Act as soon as possible.

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 11, 2019

Residential Tenancy Branch