



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BRIGHTSIDE COMMUNITY HOMES FOUNDATION and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This hearing, reconvened from a Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The tenants did not attend this hearing which lasted approximately 15 minutes. The corporate landlord was represented by its agents. The agent AF (the "landlord") primarily spoke 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 had served each of the tenants with the Notice of Hearing and evidence by registered mail sent on September 13, 2019. The landlord provided two valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that the tenants are each deemed served with the landlord's complete materials on September 18, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord applied to amend the monetary amount sought. The landlord indicated that since the application was made additional rent has come due and some payments received. The landlord said that the total arrears as of the date of the hearing is \$887.00. As the amount of arrears changing due to additional rent coming due or payments being made is reasonably foreseeable, in accordance with section 64(3)(c) of the *Act* and Residential Tenancy Rule of Procedure 4.2, I amend the monetary claim from \$895.00 to \$887.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Award as sought?

Is the landlord entitled to recover their filing fee from the tenants?

Background and Evidence

The current monthly rent for this periodic tenancy is \$923.00 payable on the first of each month. A security deposit of \$372.75 was collected at the start of the tenancy and is still held by the landlord.

The landlord testified that as of July 11, 2019, the date of the 10 Day Notice, there was an arrear of \$895.00. The landlord said that they served the 10 Day Notice on the tenants by registered mail sent on that date. The landlord provided a valid Canada Post tracking number as evidence of service.

The landlord testified that the tenants did not dispute the 10 Day Notice or make payment against the arrears. The landlord said the tenants next made payment on August 6, 2019 for an amount of \$925.00 for August rent. The landlord said that they have indicated to the tenants that any payments were accepted for use and occupancy only and did not reinstate the tenancy.

The landlord gave evidence that the rental arrear for this tenancy as of November 26, 2019 the date of the hearing is \$887.00.

Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$925.00 in accordance with the tenancy agreement and subsequent rent increases. I accept the evidence that there was an arrear of \$895.00 on July 11, 2019, the amount reflected on the 10 Day Notice. I find that the tenants were deemed served with the 10 Day Notice on July 16, 2019, five days after mailing. I accept the evidence that the tenants failed to pay the full rent due within 5 days of service, as granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October July 26, 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 notice has passed I issue an Order effective 2 days after service.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$887.00. I issue a monetary award for unpaid rent owing of \$887 as at November 26, 2019, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' \$372.75 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 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 monetary order in the landlord's favour in the amount of \$614.25, allowing the landlord to recover the rental arrear and filing fee and retain the security deposit for this 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: November 26, 2019

Residential Tenancy Branch