



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MELANIM INVESTMENTS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNDCL-S MNRL-S OPR**

Introduction

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

- Authorization to recover the filing fees from the tenants pursuant to section 72;
- A monetary order for damages or compensation and authorization to retain a security deposit pursuant to sections 38 and 67;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- An Order of Possession for unpaid Rent pursuant to sections 46 and 55.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. to enable the tenants to call into this hearing scheduled for 9:30 a.m. 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 attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenants.

The landlord's agent SA testified that she served each of the tenants with the Application for Dispute Resolution by registered mail on November 8, 2019. Tracking numbers for the mailings are recorded on the cover page of this decision. I find the tenants are deemed served with the Application for Dispute Resolution packages on

November 13, 2019, five days after the registered mailing, pursuant to sections 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 for unpaid rent?

Is the landlord entitled to recover his filing fee?

Backgrounds and Evidence

The landlord gave the following undisputed testimony. The tenants moved into the building approximately 8 years ago in a different unit. They moved into the subject unit on May 1, 2018 and signed a tenancy agreement which was not provided as evidence in this proceeding. The month to month rent was set at \$1,500.00 per month, payable on the first day of the month. A security deposit of \$500.00 was collected at that time.

The rent was increased to \$1,538.00 per month in accordance with the *Act*, effective September 1, 2019. A copy of the notice of rent increase was provided as evidence.

On June 1, 2019, the tenants began to fall behind on their rent. By September 1, 2019, the tenants were in arrears of \$4,888.00. On September 20, 2019, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") by registered mail to the residential address of the tenants. The tracking number for the mailing is recorded on the cover page of this decision. The Notice indicates the tenants failed to pay rent in the amount of \$4,888.00 that was due on September 1, 2019. The landlord testified the tenants did not file an application to dispute the Notice.

On September 30, 2019, the landlord received \$3,888.00 in partial payment of arrears, leaving \$1,000.00 outstanding. The landlord provided the tenants with a receipt noting the payment was for use and occupancy of the rental unit only. Since the Notice was served, the tenants have made more payments towards current rent owing and outstanding arrears. In evidence, the landlord has provided copies of receipts for each of the payments indicating on each receipt that the payment is for use and occupancy only. As of December 30, 2019, today's hearing date, the tenants are in arrears of \$614.00, according to the statement of account spreadsheet provided as evidence by the landlord.

Analysis - Order of Possession

The landlord's agent gave undisputed evidence she served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail on September 20,

2019. I deem the tenants served with the Notice five days later, on September 25, 2019 in accordance with sections 88 and 90 of the *Act*.

Section 46 of the *Act* states:

Within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates by that date.

The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice, in this case by September 30, 2019. The tenants have not made an 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 has led to the end of the tenancy on October 5, 2019, the corrected effective date of the notice.

Section 46(2) of the *Act* requires that a Notice under this section must comply with section 52 [*form and content of notice to end tenancy*]. I have examined the landlord's notice and find that it complies with the form and content provisions of section 52 of the *Act*, which states that the notice must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As the tenants continue to reside in the rental unit beyond the effective date, I find that the landlord is entitled to an Order of Possession, effective 2 days after service upon the tenants.

Analysis - Monetary Order

As the tenants continue to occupy the rental unit after the tenancy ended, the tenants are considered overholding tenants as defined by section 57 of the *Act*. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

I am satisfied, based on the undisputed testimony and evidence of the landlord that the tenants are currently in arrears of \$614.00 for the period they occupied the rental unit

after the tenancy ended, after taking adjustments for payments accepted for use and occupancy only. I award the landlord \$614.00 pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is entitled to recover the \$100.00 filing fee for the cost of this application. Pursuant to the offsetting provisions contained in section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in its entirety in partial satisfaction for a portion of the monetary award granted.

Item	Amount
Outstanding arrears	\$614.00
Filing fee	\$100.00
Less security deposit	(\$500.00)
Total	\$214.00

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 **\$214.00**. 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: December 30, 2019

Residential Tenancy Branch