



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR FFT LRE FFL OPRM-DR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

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

The tenants requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to suspend or set conditions on the landlords’ right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 9:40 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 a.m. The landlords were 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. During the hearing, I also confirmed from the online teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that the tenants were served with the landlord's application for dispute resolution hearing package on October 24, 2019 by way of registered mail. The landlords provided a tracking number in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on October 29, 2019, five days after its registered mailing.

Although the landlord had applied for a monetary Order of \$4,000.00 in their initial claim, since they applied another \$4,000.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlords' request to amend their original application from \$4,000.00 to \$8,000.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenants did not attend this hearing, their application is dismissed without leave to reapply.

The landlords provided undisputed testimony that the tenants were served with a 10 Day Notice, with an effective date of October 17, 2019, on October 7, 2019 by way of posting the 10 Day Notice on their door. In accordance with section 88 of the *Act*, I find that the tenants deemed with the 10 Day Notice on October 10, 2019.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?

Are the landlords entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlords gave undisputed testimony regarding the following facts. This month-to-month tenancy began on September 28, 2017. The monthly rent is currently set at \$2,000.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$1,000.00, which the landlords still hold

The landlord issued the 10 Day Notice on October 7, 2019 to the tenants, indicating an effective move-out date of October 17, 2019. A copy of the 10 Day Notice was included in the landlords' evidence. The landlords testified that the tenants have not paid any rent since the 10 Day Notice was issued to the tenants. The landlords testified that the tenants owe the entire monthly rent for September 2019 through to December 2019. The total unpaid rent is \$8,000.00. The landlords are seeking an Order of Possession, as well as a Monetary Order for the unpaid rent.

Analysis

Section 55(1) of the *Act* reads as follows:

- 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 10 Day Notice complies with section 52 of the *Act*. Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, October 20, 2019. I find that the landlords are entitled to a 2 day Order of Possession. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords provided undisputed evidence that the tenants failed to pay the rent in full for the months of September 2019 through to December 2019. Therefore, I find that the landlords are entitled to \$8,000.00 in arrears for the above period.

The landlords continues to hold the tenants' security deposit in the amount of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

I find that the landlords are entitled to recovery the \$100.00 filing fee from the tenants.

Conclusion

I dismiss the tenants' entire application without leave to reapply.

I grant an Order of Possession to the landlords effective **two (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 \$7,100.00 Monetary Order in favour of the landlords under the following terms:

Item	Amount
Unpaid Rent for September 2019	\$2,000.00
Unpaid Rent for October 2019	2,000.00
Unpaid Rent for November 2019	2,000.00
Unpaid Rent for December 2019	2,000.00
Recovery of Filing Fee	100.00
Less Security Deposit	-1,000.00
Total Monetary Order	\$7,100.00

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 2, 2019

Residential Tenancy Branch