



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPUM-DR

Introduction

This hearing 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 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared, assisted by their family member and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that all documents were served on the tenants by registered mail and provided valid Canada Post tracking numbers as evidence of service. Based on the evidence I find that the tenants were deemed served with the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated October 8, 2019, the notice of dispute application, evidence and amendment in accordance with sections 88, 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 as claimed?

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

Background and Evidence

The monthly rent for this periodic tenancy is \$1,400.00 payable on the fifth of each month. In addition the tenants are responsible for paying utilities to the landlord. A security deposit of \$650.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants failed to pay the rent for October 2019 and the landlord issued a 10 Day Notice dated October 8, 2019 for an arrear of \$1,400.00 for rent and \$197.99 for utilities. The landlord had earlier given written notice of the utility arrear to the tenants by forwarding a utility bill dated August 16, 2019. The tenants made no payment against the arrears nor is the landlord aware of the tenants filing an application to dispute the 10 Day Notice.

The tenants continued to accrue additional arrears for non-payment of rent and utilities. The landlord testified that as of the date of the hearing the total arrears is \$4,721.75. The landlord submitted into evidence the correspondence with the tenants showing that they have given written notice of the arrears.

Analysis

I accept the evidence of the landlord that under the terms of the tenancy agreement the tenants were obligated to pay the monthly rent in the amount of \$1,400.00 and utilities in the amount of \$197.99. I accept the evidence that the amount of the utilities was demanded in writing more than 30 days before the issuance of the 10 Day Notice. I further accept the evidence before me that the tenants failed to pay the full rent and utilities due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenants dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenants are 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 18, 2019. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$4,721.75. I issue a monetary award for unpaid rent and utilities owing of \$4,721.75 as at December 17, 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' \$650.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlords 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 \$4,171.75, which allows the landlords to recover unpaid rent, unpaid utilities and the filing fee for their application and retain the security deposit.

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 17, 2019

Residential Tenancy Branch