



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPRM-DR CNR

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

The tenants requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 11:11 a.m. to enable the tenants to participate in this scheduled hearing for 11:00 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 that the landlords and I were the only ones who had called into this teleconference.

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.

In the absence of any from the tenants in the hearing, I order the tenants' application dismissed without liberty to reapply.

The landlords gave sworn testimony that on November 8, 2019, the landlords had personally served the tenants with the Application for Dispute Resolution hearing package ('Application') and evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants duly served with copies of the landlords' application and evidence.

The landlords provided undisputed testimony that they had served the tenants with the 10 Day Notice, with an effective date of November 2, 2019, on October 23, 2019 by way of posting the 10 Day Notice on the tenant's door. The landlords provided proof of service in their evidentiary materials. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 10 Day Notice on October 26, 2019, 3 days after posting.

Although the landlords had applied for a monetary Order of \$1,400.00 in their initial claim, since they applied another \$700.00 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 \$1,400.00 to \$2,100.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to monetary compensation for unpaid rent?

Are the landlords entitled to recover the filing fee?

Background and Evidence

The landlords testified regarding the following facts. This fixed term tenancy began on August 1, 2019, with monthly rent set at \$700.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$350.00. The tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice on October 23, 2019 to the tenants, indicating an effective move-out date of November 2, 2019. The landlords testified that the tenants have not paid any rent since the 10 Day Notice was issued to them, and now owe the entire monthly rent for October, November, and December 2019.

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, November 5, 2019. As the tenants have not moved out, 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 landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The landlords provided undisputed evidence that the tenants failed to pay the outstanding rent in the amount of \$2,100.00 for this tenancy. Therefore, I find that the landlords are entitled to \$2,100.00 in outstanding rent for this tenancy.

The landlords continue to hold the tenants' security deposit of \$350.00. 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.

As the landlords were successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I dismiss the tenants' 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 \$1,850.00 Monetary Order in favour of the landlords, which allows the landlords to recover unpaid rent, the filing fee for this application, and also allows the landlords to retain the tenants' security deposit in partial satisfaction of the monetary claim.

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 23, 2019

Residential Tenancy Branch