



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matlding LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFL MNDCL-S MNRL-S OPR

Introduction

This hearing was scheduled in response to the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 46 and 55 of the *Act*;
- monetary order for rent and/or utilities pursuant to section 67 of the *Act*;
- monetary order for damage or compensation pursuant to section 67 of the *Act*-
Security deposit applied to the claim.
- an application for the filing fee pursuant to section 72 of the *Act*.

The landlord's spouse PT and landlord's agent SA attended the hearing via conference call. Both were given a full opportunity to be heard, to present sworn testimony, to make submissions.

The tenant did not attend this hearing, the line remained open while the phone system was monitored for ten minutes and no participant called into the hearing during this time. The Notice of Hearing was confirmed to provide the correct phone numbers and access codes to call into the conference call.

Rule of Procedure 7.3 states:

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. I proceeded to conduct the hearing.

SA testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on December 19, 2019. I find that this satisfied the service requirements set out in sections 88, and 89 of the *Act*, and find the tenant was served in accordance with the *Act*.

Issue(s)

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to a monetary order for damage or compensation, security deposit applied to the claim pursuant to section 72 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

This tenancy began on June 15, 2019. Monthly rent in the amount of \$1200.00 was payable on the first day of each month. The tenants have not paid the full rent for the months of August to December 2019. A security deposit of \$600.00 was paid by the tenants to the landlord and continues to be held in trust.

SA testified that the tenants were served with landlord's Ten-Day Notice to End Tenancy for unpaid rent (the "Notice"), dated by serving a copy to the tenants personally.

The Notice indicates an effective move-out date of December 6, 2019.
The grounds to end the tenancy cited in the Notice were:

- 1) the tenants are repeated late paying rent;

The tenants did not attend the hearing to present any submissions in relation to the Notice and the tenants did not upload any evidence disputing the landlord's Notice. The tenants vacated the rental unit in December 2019.

Analysis

I accept the landlord's undisputed testimony regarding the issuance of the Notice. Upon review of the Ten-Day Notice dated November 26, 2019, I find the form and content to be in compliance with Section 52 of the *Act*. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to Section 55(2) of the *Act*

Sections 47(4) and (5) of the Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 5 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit by that date.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective Notice dated November 26, 2019. The tenants did not participate in the hearing and did not file an application to dispute the Notice within 5 days of its receipt. Therefore, the tenants conclusively presumed pursuant to section 47(4) of the *Act* to have accepted that the tenancy ended on the effective date of December 6, 2019 and must vacate the unit.

As this has not occurred, I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Pursuant to sections 67 of the Act, I order that the tenants pay the landlord \$4,650.00, representing the rent owed from August to December 2019 deducting the security deposit of \$600.00 held in trust.

As the landlord has been successful in this application, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee pursuant to section 72 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$4,750.00 for the unpaid rent and \$100.00 filing fee pursuant to section 67 and 72 of the *Act*.

Pursuant to Section 55 of the Act, I grant an Order of Possession to the landlord effective two days after service of this Order on the tenants and any other occupants.

Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: January 27, 2020

Residential Tenancy Branch