



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL OPU

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 and utilities 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 attended, assisted by a 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 they served the tenants personally with their application for dispute resolution and evidence on December 9, 2019. Based on the testimony I find that the tenants were served in accordance with sections 88 and 89 of the *Act* on that date.

At the outset of the hearing the landlord requested to amend the monetary amount of their claim. The landlord testified that since the application was filed additional rent has come due and that the total amount of the arrear as of the date of the hearing, January 27, 2020 is \$2,140.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlords' monetary claim from \$1,750.00 to \$2,140.00 as the additional amount of rent arrear could be reasonably anticipated.

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 the filing fee from the tenants?

Background and Evidence

This periodic tenancy began in July 2019. The monthly rent is \$750.00 payable on the first of each month. The tenant is also responsible for paying a portion of the utilities for the rental building. A security deposit of \$300.00 was paid at the start of the tenancy and is still held by the landlord.

The landlord gave evidence that at the time the 10 Day Notice was issued there was a rental arrear of \$1,575.00 and utility arrear of \$175.00 as indicated on the notice. The landlord gave evidence that they had provided the utility bills and written demand to pay them to the tenants over 30 days prior to the issuance of the 10 Day Notice. The tenants did not pay the full amount owing nor did they file an application within 5 days of receipt of the notice.

The landlord testified that as of the date of the hearing the arrear for this tenancy is \$2,140.00.

Analysis

I find that the tenants were obligated to pay the monthly rent in the amount of \$750.00. I accept the evidence before me that the tenants failed to pay the full rent 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, November 17, 2019. I find that the 10 Day Notice conforms to the form and content requirement of section 52 of the *Act* and I am satisfied with the landlord's evidence that there was an arrear at the time of its issuance. 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 \$2,140.00. I issue a monetary award for unpaid rent and utilities owing of

\$2,140.00 as at January 27, 2020, 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' \$300.00 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 \$1,940, allowing the landlord to recover the rental arrear and filing fees and retain the deposit for this tenancy.

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: January 27, 2020

Residential Tenancy Branch