



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: FFL, OPRM-DR
 Tenants: RP, OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “*Act*”).

The Landlords made an Application for Dispute Resolution by Direct Request that was made on December 13, 2019 (the “Landlords’ Application”) and adjourned to a participatory hearing. The Landlords applied for the following relief, pursuant to the *Act*:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenants made an Application for Dispute Resolution on January 9, 2020 (the “Tenants’ Application”). The Tenants applied for the following relief, pursuant to the *Act*:

- an order that the Landlords comply with the *Act*; and
- an order for regular repairs.

The hearing was scheduled for 11:00 AM on March 2, 2020 as a teleconference hearing. The Landlord appeared and the appointed date and time and provided affirmed testimony. No one appeared for the Tenants. The conference call line remained open and was monitored for 19 minutes before the call ended. 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 Landlord and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 11:00 A.M. on March 2, 2020.

Rule 7.3 of the Rules of Procedure states that if a party 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 reapply. As neither of the Tenants nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenants' Application, I therefore dismiss the Tenants' Application in its entirety without leave to reapply.

The Landlord testified the Application and documentary evidence packages were served to the Tenants by registered mail on December 18, 2019, January 5 and 23 2020. Copies of the Canada Post registered mail receipts were submitted confirming the mailings. Based on the oral and written submissions of the Landlord, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on December 23, 2019, January 10 and 28, 2020, the fifth day after their registered mailings.

The Landlord was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy began on October 5, 2019. Currently, rent in the amount of \$1,600.00 is due to the Landlords on the fifth day of each month. The Tenants paid a security deposit in the amount of \$800.00 which the Landlords continue to hold. The Landlords submitted a copy of the tenancy agreement in support.

The Landlord stated that the Tenants did not pay rent when due on December 5, 2019. The Landlord stated that he subsequently served a 10 Day Notice dated November 6, 2019 with an effective date of November 16, 2019, by placing it in the Tenants' mailbox on December 6, 2019. The Landlord submitted a proof of service notice in support. The Landlord testified that the 10 Day Notice indicates that the Tenants failed to pay rent in the amount of \$1,600.00 to the Landlord which was due on December 5, 2019.

The Landlord stated that the Tenants paid the Landlord \$1,050.00 on December 20, 2019. The Landlord stated that the Tenants continue to have an outstanding balance of \$550.00 owing for December 2019 rent. The Landlord stated that the Tenants also owe \$800.00 for February 2019. Currently, the Tenants have an outstanding balance of unpaid rent in the amount of \$1,350.00. The Landlord is seeking to end the tenancy in relation to the unpaid rent. The Landlord is also seeking the return of the filing fee paid to make the Application.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

The Landlord served the Tenant with the 10 Day Notice dated November 6, 2019 with an effective vacancy date of November 16, 2019 by placing it in the Tenants' mailbox on December 6, 2019. Based on the oral and written submissions of the Landlord, and in accordance with section 90 of the *Act*, I find that the Tenants are deemed to have been served with the 10 Day Notice on December 9, 2019.

Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until December 14, 2019, to either pay rent in full or dispute the 10 Day Notice by filing an application for dispute resolution.

I find that the Tenants have not paid rent in full to the Landlord by December 9, 2019. The Tenants submitted their Application to dispute the 10 Day Notice on January 9, 2020. As the Tenants failed to attend the hearing, their Application was dismissed. Furthermore, I find the Tenants Application was made outside of the statutory time limit set out in Section 46(5) of the *Act*. As such, I find the Tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, December 19, 2019.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenants, pursuant to section 55 of the *Act*. This order should be served onto the Tenants as soon as possible. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$1,350.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords are entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$650.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$1,350.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$800.00)
TOTAL:	\$650.00

Conclusion

The Tenants have failed to pay rent and has breached the *Act* and the tenancy agreement. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenants. If the Tenants fail to comply with the order of possession it may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$650.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: March 02, 2020

Residential Tenancy Branch