



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL, FFL**

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 award 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 150 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 and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave evidence that they served each of the named respondent tenants with the notice of hearing and evidence by registered mail sent on March 5, 2020. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that each tenant is deemed served with the landlord's materials on March 10, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

During the hearing the landlord said that additional rent has come due and sought to amend their monetary claim. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent coming due is reasonably foreseeable and does not prejudice the respondents, I allow the landlord to amend their application and increase their monetary claim from \$850.00 to \$1,125.00 as of April 30, 2020.

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 landlord provided evidence on the following points. This periodic tenancy began approximately 2 years ago. The landlord assumed the tenancy from their parent who passed away recently. The monthly rent is \$750.00 payable on the first of each month. No security deposit was collected. There is no written tenancy agreement.

The landlord testified that the tenants failed to pay the full rent for the month of February 2020 and the landlord issued a 10 Day Notice dated February 24, 2020 for the arrear of \$375.00. The 10 Day Notice was served on the tenants by posting on the rental unit door on that date. The landlord submits that the tenants did not pay the arrear nor did they file an application to dispute the 10 Day Notice.

The landlord gave evidence that the tenants have failed to pay additional rent and the arrear as of the date of the hearing, April 30, 2020 is \$1,125.00. The landlord submitted into evidence copies of correspondence with the tenants as evidence of the arrears and that they have not waived their right to payment nor reinstated the tenancy.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$750.00. I accept that there was an arrear of \$375.00 on February 24, 2020 when the 10 Day Notice was issued.

Based on the evidence of the landlord I find that the tenants were deemed served with the 10 Day Notice on February 27, 2020, three days after posting. 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 tenants are 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, March 6, 2020.

The 10 Day Notice is dated February 24, 2020 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020. Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$1,125.00. I issue a monetary award for unpaid rent of \$1,125.00 as at April 30, 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.

Conclusion

I grant an Order of Possession to the landlord 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 \$1,225.00, allowing the landlord to recover the rental arrear and filing fees. 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: April 30, 2020

Residential Tenancy Branch