



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0821149 BC LTD.
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes OPR, OPN, MNRL, FFL

Introduction

On March 16, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking an Order of Possession based on the Tenants’ Notice to end tenancy pursuant to Section 45 of the *Act*, seeking a Monetary Order for the unpaid rent or utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 24, 2020, this Application was set down for a participatory hearing to be heard on May 1, 2020 at 11:00 AM.

K.D. attended the hearing as an agent for the Landlord; however, the Tenants did not attend the 18-minute hearing. All in attendance provided a solemn affirmation.

K.D. advised that he served each Tenant with a Notice of Hearing and evidence package by registered mail on March 25, 2020 and the packages were refused by the Tenants on March 26, 2020 (the registered mail tracking numbers are noted on the first page of this decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Notice of Hearing and evidence packages.

K.D. also advised that the Tenants never gave a written notice to end their tenancy. As such, the Landlord’s request for an Order of Possession based on the Tenants’ notice is dismissed without leave to reapply. .

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the Notice?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

K.D. advised that the tenancy started on September 1, 2017, that rent was owed in the amount of \$550.00 per month, and that it was due on the first day of each month. A security deposit of \$275.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He advised that he served both pages of the Notice to the Tenants on March 4, 2020 by registered mail and that they refused this package on March 5, 2020 (the registered mail tracking number is noted on the first page of this decision). He stated that clause five of the tenancy agreement requires the Tenants to pay the utilities owing and that a notification of such was posted on the building's bulletin board and on the Tenants' door on May 6, 2019. The amount owing of \$541.16 is calculated as the total municipal water and sewer bill for the property, divided by the number of rental units in the building. A copy of this bill was submitted as documentary evidence. On January 14, 2020, a demand letter was posted to the Tenants' door requesting payment for the utilities. On February 11 and 25, 2020, the Tenants were given more written notices requesting payment for the utilities; however, the Tenants have not done so to date.

As the amount of outstanding utilities was not paid within 30 days after a written demand was given to the Tenants, the Landlord is seeking an Order of Possession and

a Monetary Order for unpaid utilities in the amount of **\$541.16**. The effective end date of the tenancy on the Notice was noted as March 14, 2020.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

Section 46(6) of the *Act* states that if the tenancy agreement requires the Tenants to pay utilities, and those amounts remain unpaid more than 30 days after a written demand is given to pay those amounts, the Landlord may treat those amounts as unpaid rent and may serve the Notice.

Section 26 of the *Act* then states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

The consistent evidence before me is that the Tenants were served the Notice by registered mail on March 4, 2020 and they refused this package on March 5, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days, after being served the Notice, to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the undisputed evidence is that the Tenants did not pay the rent in full or make an Application to dispute the Notice the Tenants are conclusively presumed to have accepted this Notice. Furthermore, there is no evidence that the Tenants had a valid reason under the *Act* for withholding the rent.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award for utilities outstanding. I grant the Landlord a monetary award in the amount of **\$541.16** for these arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenants. Should the Tenants or any occupant 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.

The Landlord is provided with a Monetary Order in the amount of **\$641.16** in the above terms, and 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: May 1, 2020

Residential Tenancy Branch