



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPU, MNRL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Authorization to recover the filing fee for this application from the tenant pursuant to section 72;
- An order of possession for unpaid utilities pursuant to sections 46 and 55; and
- A monetary order for rent pursuant to section 67.

The landlords were represented at the hearing by LN ("landlord"). Neither of the tenants attended the hearing, although I left the teleconference connection open until 11:15 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that he served each of the tenants with the Notice of Dispute Resolution Proceedings by registered mail on April 17, 2020. Tracking numbers for the mailings are recorded on the cover page of this decision. During the hearing, I advised the landlord that this method of service may contradict the Residential Tenancy Branch Director's order dated March 30, 2020 regarding service, however I find the tenants were effectively served with the Notice of Dispute Resolution Proceedings on April 22, 2020, five days after mailing by registered mail pursuant to sections 89 and 90 of the Act.

Issue(s) to be Decided

Should the landlord be granted an order of possession for unpaid rent?

Is the landlord entitled to a monetary order and authorization to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement signed on March 18, 2020 was provided as evidence. The month to month tenancy began on March 16, 2020 with rent set at \$1,700.00 per month payable on the 16th day of the month. A payment for the security deposit of \$750.00 was collected at the time the tenancy agreement was signed.

The tenants paid for their first month's rent and the security deposit by a single cheque in the amount of \$2,450.00. A copy of the cheque dated March 18th was provided as evidence. On March 20th, the landlord received a 'returned item advice' from their bank indicating the cheque was returned as insufficient funds. This letter was also provided as evidence.

On March 28, 2020, the landlord personally served the tenant NH with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 28, 2020. The notice states the tenants failed to pay rent in the amount of \$1,700 + \$850.00 that was due on March 18, 2020. The effective date of the notice is April 7, 2020. The landlord testified that when he personally served the tenant, he had her sign it at the bottom of page 1. A copy of the signed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was provided as evidence.

The landlord testified that since serving the Notice, he has received 'zero' from the tenants. The tenants have not served him with any Application for Dispute Resolution to dispute the notice. He states that the tenants owe rent for March, April and May's rent is about to become due. The landlord seeks a monetary order to increase his claim for April's rent.

Analysis

I am satisfied the tenant was duly served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on March 28, 2020 in accordance with sections 88 and 90 of the Act.

Section 46 of the Act states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - (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 to which the notice relates by that date.

I note that the 10 Day Notice indicates the tenants failed to pay both rent and the security deposit. The tenants failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days has led to the end of the tenancy on the effective date of the notice.

The tenants were required to vacate the rental unit on April 7, 2020. As this date has passed, I award the landlord an Order of Possession effective 2 days after service upon the tenants.

- Monetary Order

Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *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. I accept the landlord's evidence that the tenants had no right to deduct any part of their rent and that the tenants are in arrears of rent by \$3,400.00 as of the date of today's hearing.

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. Section 64(3) allows the director to amend an application or permit an application to be amended.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenants could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent which accrued following the service of the Ten-Day Notice. I accordingly allow the landlord to amend the application as sought and award the landlord \$3,400.00 as compensation pursuant to section 67 of the *Act*.

A security deposit is money given by a tenant to be held as security for liability or obligation of the tenant respecting the residential property. As the security deposit is the tenant's money to be held in trust by the landlord, I decline to award the landlord the \$750.00 sought and dismiss this portion of the landlord's claim.

As the landlord was successful in his claim, the landlord is authorized to recover the filing fee from the tenants.

Item	Amount
March rent	\$1,700.00
April rent	\$1,700.00
Filing fee	\$100.00
Total	\$3,500.00

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 **\$3,500.00**.

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 14, 2020

Residential Tenancy Branch