



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, MNRL-S, FFL

Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for unpaid rent or utilities pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agents, RH and SG, attended the hearing by way of conference call, the tenants did not. The landlord's agents were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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's agents and I were the only ones who had called into this teleconference

The landlord's agents testified that the tenants were served with the landlord's application for dispute resolution hearing package and evidence on April 9, 2020 by way of registered mail. The landlords provided Canada Post tracking numbers during the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on April 14, 2020, five days after its registered mailing.

The landlords testified that the tenants were served with the landlord's 1 Month Notice to End Tenancy for Cause on February 7, 2020, by way of posting the 1 Month Notice on their door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the landlord's 1 Month Notice on February 10, 2020, 3 days after posting.

Although the landlord applied for a monetary Order of \$1,044.544 in their initial claim, since they applied another \$1,044.54 in rent has become owing that was not included in

their application. The landlord applied to amend their claim to reflect the additional month of unpaid rent. I have accepted the landlord's request to amend their original application from \$1,044.54 to \$2,089.08 reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to monetary compensation for unpaid rent or for money owed?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on December 1, 2012. Monthly rent is currently set at \$1,044.54, payable on the first of the month. The landlords hold a security deposit of \$447.50 for this tenancy.

The landlord served the tenants with a 1 Month Notice for Cause on February 7, 2020, with an effective date of March 31, 2020.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
 - i) seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - ii) significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord served the tenants with the 1 Month Notice as the tenants were involved in multiple incidents of harassment towards others, and which have involved the attendance of the police.

The landlord is also seeking a monetary order for unpaid rent. The landlord testified that the tenants have not paid rent for the months of April or May 2020, and believe the tenants may have moved out without notice to the landlord. The landlord is requesting an Order of Possession as the tenants have not confirmed with the landlord that they have vacated the rental unit.

Analysis

Based on undisputed testimony of the landlord, I find that the tenants were served with the Notice to End Tenancy, and I find that the 1 Month Notice complies with the form

and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 1 Month Notice, March 31, 2020.

In this case, this required the tenants and anyone on the premises to vacate the premises by March 31, 2020. As the tenants have not confirmed with the landlord that they have vacated the rental unit, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) *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.*

The landlord provided undisputed evidence that the tenants failed to pay the outstanding rent for April and May 2020. Therefore, I find that the landlord is entitled to \$2,089.08 in outstanding rent for the months of April and May 2020.

The landlord continues to hold the tenants' security deposit of \$447.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (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 1,741.58 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent, plus the filing fee, and also allows the landlord to retain the tenants' security deposit:

Item	Amount
Unpaid Rent for April 2020	\$1,044.54
Unpaid Rent for May 2020	1,044.54
Less Security Deposit	-447.50
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,741.58

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 26, 2020

Residential Tenancy Branch