



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:26 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and 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. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

Preliminary Issue- Service

The landlords testified that they posted their application for dispute resolution on the tenants' door on April 10, 2020. Photographs of same were entered into evidence. Text messages going back and forth between the landlords and both tenants were entered into evidence. The landlords state in the text messages that the landlords posted documents on the tenants' door.

Section 89 of the *Act* states:

89 (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a)by leaving a copy with the person;
- (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2)An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a)by leaving a copy with the tenant;
- (b)by sending a copy by registered mail to the address at which the tenant resides;
- (c)by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3)A notice under section 87.5 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

Section 55(2)(b) of the *Act* states:

(2)A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I accept the landlords' testimony that the tenants were served with the landlords' application for dispute resolution via posting on April 10, 2020. I find that the only portion of the landlords' application that was permitted to be served by posting was the landlords' application for an Order of Possession for unpaid rent, pursuant to section 55(2)(b) of the *Act*, in accordance with section 89(2)(d) of the *Act*. I therefore dismiss with leave to reapply, the landlords' claims for:

- a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*, and
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords', not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on January 1, 2020 and is currently ongoing. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$650.00 and a pet damage

deposit of \$650.00 were paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords' testified that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served on tenant L.H. on March 22, 2020. A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice was entered into evidence. The 10 Day Notice states that the tenants failed to pay \$100.00 that was due on March 1, 2020.

The landlords testified that they received the following rent payments from the tenants between March 1 and May 26, 2020:

- March 8, 2020: \$1,200.00; and
- May 8, 2020: \$750.00.

The landlords testified that the tenants owe \$100.00 for March's rent, \$1,300.00 for April's rent, and \$550.00 for May's rent, for a total of \$1,950.00.

The landlords entered into evidence text messages between tenant L.H. and the landlords evidencing the above testimony.

The tenants did not file an application to dispute the 10 Day Notice.

Analysis

I find that the 10 Day Notice was served in accordance with section 88 of the *Act*.

I accept the landlords' undisputed testimony that the tenants did not pay the amount stated as outstanding on the 10 Day Notice within five days of receiving it.

The tenants have not made 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 led to the end of this tenancy on the effective date of the notice.

In this case, this required the tenants to vacate the premises by April 1, 2020, as that has not occurred, I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on the

tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenants**. Should the tenants 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 to the landlords in the amount of \$100.00.

The landlords are provided with this Order 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 26, 2020

Residential Tenancy Branch