



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pine Springs
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*; and
- authorization to recover the filing fee for this application pursuant to section 72.

Although I left the connection open until 1:55 P.M. to enable the tenants to call into this teleconference scheduled for 1:30 P.M., the tenants did not attend this hearing. The landlord's representative BF (the landlord) attended the hearing and was 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 landlord and I were the only ones who had called into this teleconference.

Service of the Application, Interim Decision and Evidence (the Materials)

The landlord testified two packages containing the materials, one for each tenant, were attached to the tenants' door on April 17, 2020. A witness statement was submitted into evidence.

Pursuant to section 89 (2)(d) of the *Act*, an application may be posted to the door of the tenant if the application is only for an order of possession. I find the tenants were properly served in accordance with section 89(2)d of the *Act* regarding the application for an order of possession. The tenants are deemed to have received the materials on April 20, 2020, in accordance with section 90 (c) of the *Act*.

The landlord testified she was informed by the Residential Tenancy Branch that she could not serve documents in person because of the Covid19 pandemic.

Ministerial Order M89 sets conditions for service during the Covid19 pandemic. Section 09 states:

Despite sections 88 (a), (b) and (e) and 89 (1) (a) and (b) and (2) (a) and (c) of the Residential Tenancy Act or any other section of the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement, a person must not give or serve any document required to be given or served under the Residential Tenancy Act, the Residential Tenancy Regulation or any term of a tenancy agreement by leaving a copy of the document with a person.

The Residential Tenancy Branch Director's order (the Director's order) issued on March 30, 2020 states:

A document of the type described in section 88 or 89 of the Residential Tenancy Act or section 81 or 82 of the Manufactured Home Park Tenancy Act has been sufficiently given or served for the purposes of the applicable Act if the document is given or served on the person in one of the following ways:

- the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;
- the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
- the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

As the tenants were not served in accordance with section 89(1) of the Act, section 09 of the Ministerial Order M89 or the Director's order regarding the application for a monetary order for unpaid rent, I dismiss this application with leave to reapply.

On April 16, 2020 the landlord submitted an amendment seeking to obtain a monetary award for April's rent to the application (RTB form 42L). The landlord does not remember if the amendment was served to the tenants.

As the application for a monetary award was dismissed, the amendment to the monetary award is moot.

Preliminary Issue – named Landlord

The landlord explained the named landlord in the application is the property manager for Pine Springs. The landlord also explained the tenancy agreement submitted into evidence names Pine Springs as the landlord.

Section 64(3)(c) of the *Act* allows me to amend the application, which I have done to remove the representative's name (BF) and include the proper landlord – Pine Spring - as the applicant.

Issues to be Decided

Is the landlord entitled to:

1. obtain an order of possession, pursuant to sections 46 and 55 of the *Act*?
2. an authorization to recover the filing fee for this application from the tenants?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The landlord testified the tenancy started on November 01, 2019. Monthly rent is \$750.00 plus \$200.00 for utilities, due on the first day of the month. The landlord still holds a \$375.00 security deposit collected at the outset of the tenancy. A written tenancy agreement was submitted into evidence.

The landlord testified the tenancy agreement was wrongly completed, as the landlord and tenants names were misplaced.

The landlord testified the tenant broke one window and authorized the landlord to withhold the \$375.00 security deposit. The Condition Inspection Report (RTB form 27) signed by the tenants on March 16, 2020, states: "Broken window (large one facing highway) – Quote was '420' to repair. I agree to the deduction of \$375.00 from my security deposit".

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), dated March 04, 2020, for \$750.00 in unpaid rent and \$200.00 in

unpaid utilities. The effective date is March 14, 2020. The Notice was delivered in person to the tenants on March 04, 2020.

The landlord testified the tenants did not pay March, April and May's rent and are in arrears for \$2,850.00. The landlord testified the tenants continue to reside at the rental unit.

A witnessed Proof of Service of Notice to End Tenancy form (RTB-34) attesting the Notice was delivered in person at 11:15 A.M. on March 04, 2020 was submitted into evidence. A monetary order worksheet mentioning arrears for March 2020 was also submitted into evidence.

Analysis

I accept the landlord's uncontested testimony that the tenant must pay monthly rent of \$750.00 and utilities of \$200.00 on the first day of the month and are in arrears for \$2,850.00 for March, April and May 2020. Section 26 of the Act requires that a tenant pays rent when it is due under the tenancy agreement.

The Notice is dated March 04, 2020 and was served to the tenants in person on that date.

I find the Notice is in accordance with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the effective date and is in the approved form.

The tenants did not dispute the Notice and are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, March 14, 2020.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

I warn the tenants that they may be liable for any costs the landlord incurs to enforce the order of possession.

Conclusion

The application for a monetary order for unpaid rent is dismissed with leave to reapply.

Pursuant to section 55(2)(b) of the Act I grant an Order of Possession to the landlord effective **two days after service of this order** 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.

Pursuant to section 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00.

The landlord is 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: June 01, 2020

Residential Tenancy Branch