



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes **OPU-DR OPUM-DR FFL**

Introduction

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

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

This application was originally heard by way of a Direct Request Proceeding and on April 14, 2020 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenants confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenants had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent and utilities up to the date of the hearing. Although the tenants did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent and/or utilities (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and utilities?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The tenancy began on August 3, 2019. The monthly rent is \$2300.00 payable on the 1st day of each month plus the tenants are responsible for 100% of the utilities. The tenants paid a security deposit of \$1150.00 and a pet deposit of \$1150.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated March 10, 2020. The 10 Day Notice indicates an outstanding rent amount of \$3500.00 which was due on March 1, 2020. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on March 10, 2020 he personally served the tenant A.P. with the 10 Day Notice.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since. The landlord testified the tenants did make a couple payments towards the outstanding utilities amount. The landlord is claiming \$10,400.00 in outstanding rent which includes rent payable on June 1, 2020. The landlord is claiming \$687.99 in outstanding utilities up to May 31, 2020.

The tenants acknowledged service of the 10 Day Notice and that they did not pay the full amount of the rent arrears indicated, within five days, of receiving the Notice.

The tenant agreed to the amount of outstanding rent and utilities as claimed by the landlord.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I am satisfied that the tenants were served with the 10 Day Notice on March 10, 2020. The tenants would have had until March 15, 2020 to pay the outstanding amount as per the 10 Day Notice which they failed to do.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that 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 award the landlord \$11,087.99 for outstanding rent and utilities as claimed and agreed to by the tenants.

The landlord continues to hold security and pet deposits totalling \$2300.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$8787.99.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$8787.99. Should the tenant 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