



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 was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an Order of Possession for Cause, based on a One Month Notice to End Tenancy for Cause dated March 14, 2020; for a monetary order for unpaid rent and in the amount of \$650.00, retaining the security deposit to apply to this claim; and to recover the \$100.00 cost of her Application filing fee.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenants. The teleconference phone line remained open for over 30 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave her an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenants did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that she served each Tenant with the Notice of Hearing documents and her evidentiary submissions by Canada Post registered mail, sent on June 30, 2020. The Landlord provided Canada Post tracking numbers as evidence of service. I find that the Tenants were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenants.

Preliminary and Procedural Matters

The Landlord provided her email address in the Application and the Tenants' email address in the hearing. The Landlord confirmed her understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord said that the amount of rent owing has changed from what it was when she applied for dispute resolution. The Landlord said the Tenants have not paid any rent since February 2020; therefore, she confirmed that the full amount they owe is \$3,250.00, rather than the \$650.00 from the Application. Further, the Landlord requested that her Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenants to pay their monthly rent owing. I find no prejudice to the Tenants, as they are aware of how much rent they have or have not paid, so they could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after revising the Landlord's initial amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenants from \$650.00 to \$3,250.00.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord submitted a copy of the tenancy agreement and confirmed the following details about the tenancy in the hearing: the periodic tenancy began on November 23, 2019, with a monthly rent of \$650.00, due on the first day of each month. The Landlord said the Tenants paid her a security deposit of \$325.00, and a pet damage deposit of \$325.00, and that the Landlord still has the deposits.

The Landlord said she issued the One Month Notice, because the Tenants were repeatedly late paying rent. The Landlord said that the Tenants were late or failed to pay rent in the last seven months, as follows:

	MONTH	DATE PAID RENT	AMOUNT OWING
1	January 2020	January 3, 2020	\$0.00
2	February 2020	February 20, 2020	\$0.00
3	March 2020	No rent paid	\$650.00
4	April 2020	No rent paid	\$650.00
5	May 2020	No rent paid	\$650.00
6	June 2020	No rent paid	\$650.00
7	July 2020	No rent paid	\$650.00
		TOTAL	\$3,250.00

The Landlord submitted a copy of the One Month Notice, which was signed and dated March 14, 2020, it has the rental unit address, and it was served via registered mail on March 17, 2020. The One Month Notice has an effective vacancy date of April 25, 2020, which is automatically corrected to April 30, 2020 by section 53 of the Act. The grounds for the eviction on the One Month Notice were that the Tenants are repeatedly late paying rent.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Order of Possession

Pursuant to section 90 of the Act, I find that the Tenants were deemed served with the One Month Notice on March 22, 2020, five days after it was sent to the Tenants by registered mail.

Section 47(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

[emphasis added]

As there is no evidence before me that the Tenants disputed the One Month Notice, I find that they are conclusively presumed under section 47(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on April 30, 2020. As a result, I find that the Tenants are overholding the rental unit and that the Landlord is entitled to an Order of Possession pursuant to section 55(2)(b) of the Act.

As the corrected effective date has passed, and the Landlord testified that rent has not been paid since February 2020, the Order of Possession will therefore be effective two days after service on the Tenants.

The Tenants are cautioned that if the Landlord serves the Orders via registered mail, according to Residential Tenancy Branch Policy Guideline 12, “Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.” [emphasis added]

Monetary Order

Section 26 of the Act states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenants had a right to deduct any portion of their rent from the monthly rent due to the Landlord. I find that the Tenants have not paid their last five rent payments of \$650.00 each for a total of \$3,250.00.

Based on the evidence before me overall, I award the Landlord with **\$3,250.00** from the Tenants in recovery of five months of unpaid rent, pursuant to section 67 of the Act. I also award the Landlord with recovery of her **\$100.00** Application filing fee, pursuant to section 72 of the Act, for a total monetary award of **\$3,350.00**.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants’ \$325.00 security and \$325.00 pet damage deposits in partial satisfaction of the Landlord’s monetary award. The Landlord is authorized to retain the Tenants’ security and pet damage deposits, and she is awarded a Monetary Order in the amount of **\$2,700.00** against the Tenants for recovery of the remaining amount of the award.

Conclusion

The Landlord is successful in her Application, as the Tenants did not dispute the One Month Notice or the Application. Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord, effective **two days after service of this Order** on the Tenants. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord's Application for recovery of unpaid rent is successful in the amount of \$3,250.00. Further, the Landlord is awarded recovery of her \$100.00 Application filing fee from the Tenants for a total monetary award of \$3,350.00.

The Landlord is authorized to keep the Tenants' security and pet damage deposits of \$650.00 in partial satisfaction of the Landlord's monetary award. I grant the Landlord a Monetary Order under section 67 of the Act from the Tenants in the amount of **\$2,700.00** for the remainder of the monetary award owing by the Tenants to the Landlord.

This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 21, 2020

Residential Tenancy Branch