



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPC, FFL**

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee from the tenants pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord appeared and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served each of the tenants with their application and evidence by registered mail sent on July 27, 2020. The landlord provided two valid Canada Post tracking receipts as evidence of service. Based on the evidence I find that each of the tenants is deemed to be served with the landlord's materials on July 31, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. I note that, as stated in Residential Tenancy Policy Guideline 12, the failure or refusal of a party to accept or pick up registered mail does not override the deeming provisions of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

This fixed-term tenancy began in November 2019. The monthly rent is \$2,200.00 payable on the first day of each month. A security deposit of \$1,100.00 and pet damage deposit of \$500.00 were collected at the start of the tenancy and is still held by the landlords.

The landlord submits that the tenants failed to pay rent on the date that it was due for the months of December 2019, January, February and March, 2020. The landlord submitted into evidence a rental ledger showing the date that payments were received for those months.

The landlord issued a 1 Month Notice to End Tenancy for Caused dated July 14, 2020. The 1 Month Notice was served on the tenants by hand delivery on that same date. The landlord testified that they are unaware of the tenants having filed an application to dispute the notice. The reason provided on the 1 Month Notice for the tenancy to end is that the tenants have been repeatedly late paying rent. The landlord provided details of the cause showing that rent was not paid on the due date for the months of November and December 2019, and January and February 2020.

The landlord submits that the tenants have failed to pay full rent for the months of April, May, June, July and August 2020 and there is a rental arrear of \$10,200.00 as at the date of the hearing. The parties have not entered into a repayment plan for the overdue rent for those months.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the 10 days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ends on the effective date of the 1 Month Notice, August 31, 2020.

I find that the landlords' 1 Month Notice meets the form and content requirements of section 52 of the *Act* as it is in the approved form and clearly identifies the parties, the

address of the rental unit, the effective date of the notice and the reasons for ending the tenancy.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number to justify a notice to end tenancy. I find that there is sufficient evidence by way of the rental ledger to show that the tenants failed to pay rent by the due date on the first of the month for the months of December, 2019 and January, February and March, 2020.

Accordingly, I find that the landlord is entitled to an Order of Possession enforceable on the effective date of the 1 Month Notice, August 31, 2020.

Pursuant to section 3(2) of the COVID-19 (Residential tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (the "C19 Regulation") a landlord must give a tenant a repayment plan if there is overdue rent that became payable during the specified period between March 18, 2020 and August 17, 2020. Residential Tenancy Policy Guideline 52 elaborates on this by stating that, "If a tenancy has ended prior to a repayment plan being given...the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order."

In the present case I accept the evidence of the landlord that there is no repayment plan in place between the parties. While I have issued an Order of Possession effective August 31, 2020, I find that this tenancy has not yet ended. Therefore, I find that it is premature to issue a monetary award in the landlord's favour for the rental arrear arising from the affected period of March 18, 2020 to August 17, 2020. Once the tenancy has ended there is no longer an obligation upon the landlord to offer the tenants a repayment plan pursuant to the C19 Regulations. Accordingly, I dismiss this portion of the landlord's application with leave to reapply.

As the landlords were successful in their application I allow the landlords to recover their filing fee from the tenants. In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective 1:00pm on **August 31, 2020**. Should the tenants or any occupant 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.

The security deposit for this tenancy is reduced by \$100.00 from \$1,100.00 to \$1,000.00.

The balance of the application is dismissed with leave to reapply.

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: August 31, 2020

Residential Tenancy Branch