



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNRL-S OPR

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 or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent, GL ("landlord"), attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference for this hearing.

The landlord's agent testified that the tenants were sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on July 31, 2020. The landlord provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with the Application and evidence on August 5, 2020, five days after mailing. The tenants did not submit any written evidence for this hearing.

The landlord's agent testified that the tenants were served the 10 Day Notice dated July 10, 2020, by posting the notice on their door. The landlord provided a proof of service as well as a photo in their evidentiary materials. In accordance with sections 88 and 90

of the *Act*, the 10 Day Notice I find the 10 Day Notice deemed served on July 13, 2020, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on July 1, 2017, with monthly rent currently set at \$5,700.00, payable on the first of every month. The landlord collected a security deposit in the amount of \$2,850.00, which they still hold.

The landlord served the tenants with a 10 Day Notice for unpaid rent on July 10, 2020 for failing to pay the February and March 2020 rent. The landlord testified that since the 10 Day Notice was served, the tenants have failed to pay the outstanding rent.

The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent and recovery of the filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on July 24, 2020, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by July 24, 2020. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenants have not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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.

The landlord provided undisputed evidence that the tenants failed to pay any monthly rent for the months of February and March 2020. Therefore, I find that the landlord is entitled to \$11,400.00 in outstanding rent for the months of February and March 2020.

The landlord continues to hold the tenants' security deposit of \$2,850.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenants or anyone 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.

I issue a \$8,650.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent for February and March 2020, the filing fee for this application, and also allows the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent for February 2020	\$5,700.00
Unpaid Rent for March 2020	5,700.00
Recovery of Filing Fee for this Application	100.00
Security Deposit	-2,850.00
Total Monetary Order	\$8,650.00

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: September 1, 2020

Residential Tenancy Branch