



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPC, OPU, MNRL, MNDCL, MNDL**

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; and
- a monetary order for unpaid rent, damages and loss pursuant to section 67.

The tenants did not attend this hearing which lasted approximately 15 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 landlords appeared and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord SH (the "landlord") primarily spoke on behalf of both landlords.

The landlord testified that they served each of the tenants with their application and evidence by registered mail sent on August 21, 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 August 26, 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?

Background and Evidence

This periodic tenancy began in March, 2018. The monthly rent is \$1,975.00 payable on the first of each month. The tenants are also responsible for paying utilities under the tenancy agreement. A security deposit of \$987.00 was collected at the start of the tenancy and is still held by the landlords.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated July 25, 2020. The 1 Month Notice was served on the tenants by leaving a copy in a mailbox on July 26, 2020. The landlord testified that they are unaware of the tenant filing an application to dispute the notice.

The reasons provided on the notice for the tenancy to end are:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided details of the breach, testifying that the tenant has caused or refused to allow the landlord to repair plumbing issues in the rental unit. The landlord submits that the tenant has prevented repairs to the water and plumbing fixtures in the rental unit, which left unattended can cause extraordinary damage to the rental unit.

The landlord seeks a monetary award for unpaid rent and utilities by the tenants. The landlord submits that there was a utility arrear of \$482.62 accrued during the period of September 2019 to March 20, 2020. The landlord gave written demand for the payment of these arrears by a letter dated July 9, 2020.

The landlord submits that the tenant has failed to pay rent since June 2020 and rent has been unpaid for June, July, August and September, 2020. The landlord also submits there are additional utility fees payable from the period of March 20, 2020 to August, 2020 in the amount of \$899.65.

Analysis

Section 47(4) of the Act provides that a tenant may dispute a 1 Month Notice within 10 days after the date the tenant receives the notice. Section 47(5) provides that if a tenant does not make an application in accordance with subsection (4) the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In the present case I accept the evidence of the landlord that they served the tenant with the 1 Month Notice by placing it in a mailbox on July 26, 2020. Placing a document in the mailbox or mail slot is an acceptable means of service pursuant to section 88(f) of the Act. I find that the tenants are deemed to have been served with the 1 Month Notice on July 29, 2020, three days after leaving a copy in a mailbox, pursuant to section 90(d) of the Act.

Therefore, the tenants had 10 days from that date, until August 8, 2020 to file an application to dispute the notice. The tenant did not file an application for dispute resolution within the 10 days provided by the Act, or at all.

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 is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the 1 Month Notice, August 31, 2020.

I find that the landlord's 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. I accept the landlord's evidence by way of their testimony and documentary evidence that the tenant's conduct has put the property at significant risk by causing or exacerbating plumbing issues and refusing to allow access for repairs.

Therefore, I find that the landlords are entitled to an Order of Possession pursuant to section 55 of the Act. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove

the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

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, unless a prior agreement has been entered into and has not been cancelled. 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 landlords that there is no repayment plan in place between the parties. While I have issued an Order of Possession effective 2 days after service, I am unable to find that this this tenancy has ended. Therefore, I find that it is premature to issue a monetary award in the landlords’ favour for the rental and utility 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.

I am satisfied that there is a rental and utility arrear arising from the tenant’s failure to make payments as required under the tenancy agreement from periods outside of the affected period. I am satisfied with the landlord’s evidence that there was a utility arrear of \$482.62 as at March 18, 2020, prior to the affected period commencing. I am also satisfied with the evidence that the tenant failed to pay rent in the amount of \$1,975.00 for the month of September 2020, outside of the affected period.

Accordingly, I issue a monetary award in the landlords’ favour in the amount of \$2,457.62 for the unpaid rent and utilities outside of the affected period.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants’ full security deposit in partial satisfaction of the monetary award issued in the landlord’s favour

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. 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.

I issue a monetary order in the landlords' favour in the amount of \$1,470.62, allowing the landlord to recover unpaid rent and utilities and retain the security deposit for this tenancy. 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.

The balance of the landlord's 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: October 1, 2020

Residential Tenancy Branch