



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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

- An order of possession pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant 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 landlord attended 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 the tenant with the hearing package by registered mail sent on October 8, 2020. The landlord provided a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find the tenant is deemed served with the landlord's materials on October 13, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*. I note that pursuant to Residential Tenancy Policy Guideline 8 the 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

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in 2017. The current monthly rent is \$340.00 payable on the first of each month. The tenant is also responsible for paying a portion of the utilities for the property when provided a written request by the landlord. The tenant paid a security deposit of \$175.00 at the start of the tenancy which is still held by the landlord.

The landlord gave the tenant written notice that utilities in the amount of \$40.00 was payable on August 1, 2020. The tenant failed to pay the utilities or the full amount of rent owing on September 1, 2020. The landlord submits that the total arrear for rent and utilities as at September 21, 2020 was \$440.00. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on that date, serving it by posting on the rental unit door.

There was a previous hearing under the file number on the first page of this decision. That hearing dealt with the tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid rent. The parties failed to attend the earlier hearing and the tenant's application was dismissed. As neither party attended that hearing the presiding Arbitrator declined to issue an Order of Possession in the landlord's favour.

The tenant failed to pay the outstanding rent and utilities within 5 days of service of the 10 Day Notice. The tenant has made some payments for subsequent rent that has come due but the landlord testified that as of the date of the hearing there remains an arrear of \$480.00. The landlord gave evidence that any payments accepted from the tenant was noted to only be for use and occupancy of the rental unit and did not cancel the 10 Day Notice nor reinstate the tenancy.

Analysis

I find that the tenant was obligated to pay the monthly rent in the amount of \$340.00 and utilities as demanded by the landlord. I accept the evidence that there was a rent and utility arrear of \$440.00 giving rise to the issuance of a 10 Day Notice.

Pursuant to sections 88 and 90 of the Act, I find that the tenant is deemed served with the 10 Day Notice on September 24, 2020, three days after it was posted on the rental unit door.

I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act*. Accordingly, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$480.00. I issue a monetary award for unpaid rent and utilities owing of \$480.00 as at December 11, 2020, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$175.00 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 tenant 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 monetary order in the landlord's favour in the amount of \$405.00, allowing the landlord to recover the rental and utility arrear and filing fees and retain the 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.

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: December 11, 2020

Residential Tenancy Branch