



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STONE HAUS REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The landlord's agents (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The landlord stated that the tenants were served with the notice of hearing package and the submitted 26 document evidence files via Canada Post Registered Mail on December 9, 2020. The tenants did not attend. The landlord also stated that the tenants' hearing package was returned by Canada Post as "unclaimed". I accept the undisputed affirmed evidence of the landlord and find that the tenants were properly served as per section 88 and 89 of the *Act* with the notice of hearing package and the landlord's submitted documentary evidence. Despite not claiming the hearing package or attending the hearing, the tenants' are deemed sufficiently served as per section 90 of the *Act*.

The hearing concluded after 49 minutes past the start of the scheduled hearing time. The landlords confirmed receipt of the tenants' notice of hearing package and the 1 submitted documentary evidence file.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants in the absence of the tenants' participation in this hearing, I order the tenants' application dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 15, 2017 on a fixed term tenancy ending on October 31, 2018 as per the submitted copy of the signed tenancy agreement dated October 2, 2017. The monthly rent was \$1,995.00 payable on the 1st day of each month. A security deposit of \$997.50 and a pet damage deposit of \$1,000.00 were paid on September 29, 2017.

The landlord stated that the tenants were served with a 10 Day Notice for unpaid rent dated November 4, 2020 by posting it to the rental unit door on November 4, 2020. The landlord submitted a photograph of the 10 Day Notice dated November 4, 2020 posted to the rental unit door as confirmation. The 10 Day Notice states that the tenant failed to pay rent of \$3,535.08 that was due on November 1, 2020.

The landlord clarified that the tenants are currently in rental arrears totalling \$27,642.00 which consists of:

\$2,046.00	Unpaid Rent, November 2020
\$2,046.00	Unpaid Rent, December 2020
\$2,046.00	Unpaid Rent, January 2021
\$2,046.00	Unpaid Rent, February 2021
\$19,358.00	Unpaid Rental Arrears, January 2020 to October 2020
\$100.00	Filing Fee
\$27,642.00	Total

The landlord clarified the entire monetary claim is based upon the \$19,358.00 in rental arrears for the period January 2020 to October 2020 based upon the submitted copy of the repayment plan dated September 14, 2020. The landlord stated that a notice of rent increase was issued increasing the monthly rent from \$1,995.00 by \$51.00 to \$2,046.00 starting on March 1, 2020.

The landlord stated that a repayment plan was issued using the #RTB-14 form dated September 14, 2020 which states the tenants owe \$19,358.00 which provides for a repayment plan over 13 months from November 1, 2020 to September 1, 2021 at \$1,498.08 per month. The landlord stated that this repayment plant was served to the tenants on September 14, 2020 via Canada Post Registered Mail.

The landlord stated that subsequently the tenants were served with the 10 Day Notice dated November 4, 2020 which details \$3,535.08 in unpaid rent which is made up of:

\$2,046.00	Unpaid Rent, November 2020
\$1,489.08	Rental Arrears Payment Plan installment, November 2020

The landlord stated that as of the date of this hearing the tenants have failed to pay any rent.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, the landlord has provided undisputed evidence that the tenants were served with the 10 Day Notice dated November 4, 2020 by posting it to the rental unit door on November 4, 2020. The effective end of tenancy date shown of November 15, 2020 is corrected to November 17, 2020 based upon the tenants being deemed served 3 days after service on November 7, 2020. As such, the effective end of tenancy date is corrected to November 17, 2020.

Pursuant to Section 55 (1) of the Act, the landlord is entitled to an order of possession after the tenants' application for dispute was dismissed without leave to reapply. The order of possession is to be effective 2 days after it is served upon the tenants.

As for the landlord's monetary claim, I find based upon the undisputed evidence of the landlord that the landlord has established a total monetary claim of \$27,642.00 which includes the landlord's original monetary claim of \$23,550.00 and ongoing rental arrears for January 2021 and February 2021 at \$2,046.00 per month.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$27,642.00.

These orders must be served upon the tenants. Should the tenants fail to comply with these orders, these orders may be filed in the Supreme Court of British Columbia and enforced as orders of those courts.

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: February 03, 2021