



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing originally convened as a direct request proceeding and was adjourned to this participatory hearing. This decision should be read in conjunction with the Interim Decision dated November 27, 2020. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:13 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The Interim Decision made the following Order:

The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.

The landlord testified that the tenants were served with the above documents via registered mail on December 6, 2020. A receipt for same was entered into evidence, I find that the tenants were deemed served with the landlord's application for dispute

resolution on December 11, 2020, five days after being mailed, pursuant to sections 89 and 90 of the *Act*.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord’s original application claimed unpaid rent in the amount of \$1,900.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased as the tenant has not paid rent from August 16, 2020 to February 15, 2021.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord’s application to include a monetary claim for all outstanding rent in the amount of \$3,600.00.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the landlord's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on November 18, 2015 between the tenants and the landlord's sister who co-inherited the property with the landlord from their parents. The landlord testified that a new tenancy agreement between herself and the tenants was entered into in 2018. Both tenancy agreements were entered into evidence. Monthly rent in the amount of \$600.00 is payable on the 16th day of each month. A security deposit of \$300.00 was paid by the tenants to the landlord.

The landlord testified that the tenants were served with a 10 Day Notice for Unpaid Rent (the "Notice") via registered mail on October 16, 2020. The landlord entered into evidence a Canada Post customer receipt including the tracking number. The Canada Post website confirms that the above package was delivered on October 29, 2020. The Notice has a stated effective date of October 26, 2020. All three pages of the 10 Day Notice were entered into evidence.

The landlord testified that the tenant has not paid rent for August 16, 2020 to February 15, 2021.

Month	Amount
August 16- September 15, 2020	\$600.00
September 16- October 15, 2020	\$600.00
October 16 – November 15, 2020	\$600.00
November 16 – December 15, 2020	\$600.00
December 16, 2020 – January 15, 2021	\$600.00
January 16 – February 15, 2021	\$600.00
Total	\$3,600.00

The landlord entered into evidence photographs of the subject rental property in which all of the tenants' personal property is still located at the subject rental property, food is in the fridge and cars are also on the property.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$600.00 on the first day of each month. Based on the undisputed testimony of the landlord I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlord \$3,600.00 in unpaid rent from August 16, 2020 to February 15, 2021.

As the landlord is successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$300.00.

I find that the Notice was served on the tenants in accordance with section 88 of the *Act* and meets the form and content requirements of section 52 of the *Act*. I find that service of the Notice was effected on the tenants on October 29, 2020.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is November 8, 2020. I find that the corrected effective date of the Notice is November 8, 2020.

Based on the undisputed testimony of the landlord, I find that the tenants failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of his tenancy on the corrected effective date of the notice.

In this case, this required the tenants to vacate the premises by November 8, 2020, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the

tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

The landlord is entitled to retain the tenants' security deposit of \$300.00.

I issue a Monetary Order to the landlord in the amount of \$3,400.00.

The landlord is provided with this Order in the above terms and 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.

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenants**. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 12, 2021

Residential Tenancy Branch