



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL, CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlords attended the hearing by way of conference call, the tenants did not. I waited until 1:41 p.m. to enable the tenants to participate in this scheduled hearing for 1:30 p.m. The landlords were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

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. The hearing proceeded and completed in the absence of the tenants.

The landlords gave sworn testimony that on February 23, 2021 copies of the Application for Dispute Resolution hearing package ('Application') and evidence were sent to the tenants by registered mail and signed for and delivered on February 25, 2021. In accordance with sections 88 and 89 of the *Act*, I find that the tenants were duly served with copies of the landlords' application and evidence.

The landlords provided undisputed testimony that the tenants were served with the 10 Day Notice, on January 8, 2021 by way of posting it on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on January 11, 2021, three days after posting.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession based on the 10 Day Notice?
Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The landlords gave undisputed testimony regarding the following facts. This tenancy began on December 1, 2020, with monthly rent set at \$1450.00, payable on the first of each month. The landlords collected, and still hold, a security deposit of \$650.00 and a pet deposit of \$650.00. The tenants continue to reside in the rental unit.

The landlords issued the 10 Day Notice on January 8, 2021 to the tenants, indicating an effective move-out date of January 18, 2021. A copy of the 10 Day Notice was included in the landlord's evidence as well as a Proof of Service. The landlords testified that the tenants have made some partial payments but still have an outstanding balance of \$3380.00 for unpaid rent and \$443.86 for unpaid utilities. The landlord requests an order of possession.

Analysis

Section 55(1) of the *Act* reads as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply. I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, January 21, 2021. I find that the landlords are entitled to a 2-day Order of Possession for unpaid rent. The landlords 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 landlords may enforce this Order in the Supreme Court of British Columbia.

The landlords continue to hold the tenant's security and pet deposit in the amount of \$1300.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain \$100.00 from the tenant's security deposit in full satisfaction and recovery of the filing fee for this application.

The landlords referred to monies still owed to them; however they have not filed an application to recover those costs. The landlord is at liberty to pursue that claim if they so choose.

Conclusion

As the tenants did not attend this hearing, their entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlords effective **two (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.

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: April 09, 2021

Residential Tenancy Branch