



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S MNDCL-S FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession based on an undisputed 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated January 27, 2021 (10 Day Notice), for a monetary order for unpaid rent and/or utilities, for loss of rent, to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

An agent for the landlord, SM (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 5, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants by posting to the tenants' door on Saturday, March 6, 2021 at 6:01 p.m. by the agent, SM. Based on the undisputed testimony before me, I accept that the tenants were sufficiently served on March 6, 2021 as claimed by the agent. I further find that this matter was undisputed by the tenants as the tenants did not attend the hearing, continue to occupy the rental unit according to the agent, and continue to fail to pay any rent according to the agent.

Preliminary and Procedural Matters

The agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

As there was no email address for either tenant, the decision will be sent by regular mail to the tenant.

Finally, pursuant to section 62(3)(c) of the Act, the name of the landlord was corrected to TL and the name of one of the tenants, JL, the latter of which was inadvertently reversed on the application, were corrected.

Issues to be Decided

- Is the landlord entitled to an order of possession based on an undisputed 10 Day Notice?
- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy agreement began on October 1, 2018. The tenants paid a security deposit of \$1,550.00 at the start of the tenancy, which has accrued \$0.00 in interest. The landlord continues to hold the tenants' security deposit. Monthly rent of \$3,100.00 is due on the first day of each month.

The agent confirmed service of the 10 Day Notice by personal service on tenant TL at 10:15 p.m. on January 27, 2021 at the rental unit address. The 10 Day Notice included an effective vacancy date of February 6, 2021. The agent affirmed that the tenants did not dispute the 10 Day Notice and failed to vacate the rental unit and continue to occupy the rental unit. The agent stated that the landlord is seeking an order of possession as the tenants continue to occupy the rental unit and that the landlord has suffered unpaid rent and a loss of rent as follows:

ITEM DESCRIPTION	AMOUNT OWING
1. September 2020 rent	\$3,100.00
2. October 2020 rent	\$3,100.00
3. November 2020 rent	\$3,100.00
4. December 2020 rent	\$3,100.00
5. January 2021 rent	\$3,100.00
6. February 2021 rent	\$3,100.00

7. March 2021 rent	\$3,100.00
8. April 2021 rent	\$3,100.00
9. May 2021 rent	\$3,100.00
TOTAL	\$27,900.00

The agent is seeking to retain the tenants' security deposit of \$1,550.00 from the amount owing and the filing fee for this application.

Analysis

Based on the undisputed documentary evidence of the landlord and undisputed testimony provided by the agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – Section 46 of the Act states that if the tenant once served with the 10 Day Notice does not dispute the Notice within 5 days of receiving the 10 Day Notice, the tenants are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the effective vacancy date. In the matter before me, the tenants did not dispute the 10 Day Notice and as a result, I find the tenancy ended on the effective vacancy date, which was February 6, 2021.

As the tenants continue to occupy the rental unit, I find the tenants are overholding the rental unit. Therefore, pursuant to section 55 of the Act, I grant the landlord an order of possession effective **two (2) days** after service on the tenants. I have reviewed the 10 Day Notice and find that it complies with section 52 of the Act.

Monetary order – Section 26 of the Act applies and states that tenants are responsible to pay the rent in accordance with the tenancy agreement on the date that it is due. In the matter before me, the \$3,100.00 monthly rent was due on the first of each month. I find the tenants breached section 26 of the Act by failing to pay the rent as claimed by the landlord and as stated by the agent. Therefore, pursuant to section 67 of the Act, I find the landlord has met the burden of proof and that the tenants owe **\$27,900.00 in rent arrears and loss of rent**, as described in the table above.

In addition, as the landlord's application was successful and pursuant to section 72 of the Act, I grant the landlord **\$100.00** for the recovery of the cost of the filing fee under the Act. Given the above, I find the landlord's total monetary claim is **\$28,000.00** comprised of unpaid rent, loss of rent and the filing fee as described above.

As the landlord continues to hold the tenants' security deposit of \$1,550.00, which has accrued no interest, I authorize the landlord to retain the tenants' entire \$1,550.00 security deposit in partial satisfaction of the landlord's monetary claim of \$28,000.00. I find the tenants continue to owe the balance to the landlord in the amount of \$26,450.00. Accordingly, I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$26,450.00**.

Conclusion

The landlord's application is fully successful. The tenancy ended on February 6, 2021. The tenants have been overholding the rental unit since that date.

The landlord is granted an order of possession effective two (2) days after service on the tenants. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia. The tenants are cautioned that they can be held liable for all costs related to the enforcement of the order of possession.

The landlord has been authorized to retain the tenants' full security deposit of \$1,550.00 to offset the total amount of \$28,000.00 owing by the tenants to the landlord. I grant the landlord a monetary order pursuant to section 67 of the Act for the balance owing by the tenants to the landlord in the amount of \$26,450.00. This order must be served on the tenants and may be enforced in the Small Claims Division of the Provincial Court of British Columbia. The tenants are cautioned that they can be held liable for all costs related to the enforcement of the monetary order.

The decision and orders will be emailed to the landlord. The decision will be sent by regular mail to the tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 31, 2021

Residential Tenancy Branch