



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPC, FFL

Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenants' security and pet damage deposits, pursuant to section 38; 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 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords called witness R.F. and witness G.F. 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 landlords their witnesses and I were the only ones who had called into this teleconference.

The landlords were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlords testified that they are not recording this dispute resolution hearing.

The landlords confirmed their email address for service of this decision and orders.

Landlord T.F. testified that his mother, witness R.F., personally served the tenants with the landlords' application for dispute resolution on April 29, 2021. Witness R.F. testified that she personally served the landlords' application for dispute resolution on the

tenants on April 29, 2021. Witness G.F., the landlord's father and husband to witness R.F., testified that he watched witness R.F. serve the landlords' application for dispute resolution on the tenants on April 29, 2021. Based on all the above undisputed testimony, I find that the tenants were personally served with the landlords' application for dispute resolution on April 29, 2021, in accordance with section 89 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 landlords' original application claimed unpaid rent in the amount of \$2,150.00. Since filing for dispute resolution, the landlords testified that the amount of rent owed by the tenants has increased to \$9,650.00.

I find that in this case the fact that the landlords are 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 landlords' application to include a monetary claim for all outstanding rent in the amount of \$9,650.00.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for cause, pursuant to sections 47 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?

3. Are the landlords entitled to retain the tenants' security and pet damage deposits, pursuant to section 38 of the *Act*?
4. Are the landlords 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 landlords, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on July 31, 2020 and is currently ongoing. Monthly rent in the amount of \$1,950.00 is payable on the first day of each month. A security deposit of \$825.00 and a pet damage deposit of \$825.00 were paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that the tenants were personally served with the One Month Notice to End Tenancy for Cause (the "One Month Notice") on March 26, 2021. A witnessed proof of service document stating same was entered into evidence. The One Month Notice is dated March 26, 2021 and states that the tenants must vacate the subject rental property by April 30, 2021 because the tenants are repeatedly late paying rent.

The landlords testified that the tenants were late paying rent every month from November 2020 to July 2021. The landlord entered into evidence a rent ledger stating same.

The landlords testified that the tenants paid \$100.00 towards March 2021's rent and still owe \$1,850.00 for March 2021. The landlords testified that the tenants have not paid any rent for April, May, June and July 2021. The landlords testified that the tenants currently owe \$9,650.00 in unpaid rent. A rent ledger stating same was entered into evidence.

The tenant did not file an application with the Residential Tenancy Branch to cancel or dispute the One Month Notice.

Analysis

Based on the testimony of the landlords and the witnessed proof of service document entered into evidence, I find that the tenants were personally served with the One Month Notice on March 26, 2021, in accordance with section 88 of the *Act*.

Section 47(4) and section 47(5) of the *Act* state that if a tenant who has received a One Month Notice does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The tenants did not dispute the One Month Notice within 10 days of receiving it. I find that, pursuant to section 47(5) of the *Act*, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the One Month Notice, that being April 30, 2021. As the tenants did not vacate the subject rental property on that date, I award the landlords a two-day order of possession. 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 two days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

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 \$1,950.00 on the first day of each month. Based on the undisputed testimony of the landlords and the rent ledger entered into evidence I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords \$9,650.00 in unpaid rent from March 2021 to July 2021.

As the landlords were successful in their 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) of the *Act* states that if the director orders tenants to make a payment to the landlords, the amount may be deducted from any security deposit or pet damage deposit due to the tenants. I find that the landlords are entitled to retain the tenants security and pet damage deposits in the amount of \$825.00 each, in part satisfaction of their monetary claim for unpaid rent against the tenants.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords 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.

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
March rent	\$1,850.00
April rent	\$1,950.00
May rent	\$1,950.00
June rent	\$1,950.00
July rent	\$1,950.00
Filing Fee	\$100.00
Less security deposit	-\$825.00
Less pet damage deposit	-\$825.00
TOTAL	\$8,100.00

The landlords are 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.

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: July 20, 2021

Residential Tenancy Branch