



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL-S, MNDCL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on June 15, 2021 seeking an order of possession for the rental unit. Additionally, they seek to recover the money for unpaid rent, other monetary loss, and the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 16, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenants did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenants with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document was served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that they used registered mail for the purpose of serving the notice of this hearing, as well as their prepared documentary evidence. This was one separate package for each tenant. In the hearing they provided that the packages came back to them, undelivered, the day prior to this hearing.

I accept the landlord’s evidence that this is proof of the tenants refusing the registered mail packages; therefore, I find they avoided service. The tracking history reveals an attempt by the postal service to deliver the packages; however, delivery was not completed after proper notice was provided to the tenants.

Based on the submissions of the landlord, I accept that they served the tenants notice of this hearing and their Application in a manner complying with s. 89(1)(c) of the *Act*, and the hearing proceeded in the tenants' absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and/or utilities pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent and/or utilities pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement and provided a copy of the agreement for this hearing. The tenancy began on April 1, 2020, with the rent amount of \$2,200 per month, and a paid security deposit of \$1,100. More specific to the amount the landlord claims for compensation, they also referred to the term in the Addendum that specifies the tenants shall pay for "all water, power, heat, cable, telephone, and any other user service fees that may be applied."

The landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"). They served this to the tenants by hand, and one of the tenants signed that they received the document on June 2, 2021. This service, shown by the one tenant's signature, is provided in the document entitled Proof of Service.

The 10-Day Notice states that the tenants had five days from the date received to pay the rent amount and outstanding utility amounts in full, or the tenancy would end on the vacancy date indicated: June 16, 2021. The amounts specified on the document are

rent of \$3,545.02 due on June 1, 2021; and utility amounts of \$928.50 due on December 26, 2020.

The landlord also applied for a monetary order for \$4,473.52, for the amounts listed on the 10-Day Notice. In the hearing, the landlord provided that they received no rent payments, and did not receive any amount from the tenants for utility amounts owing. The landlord provided verification of the tenants' account with the

The tenants did not vacate the unit, and have been overholding in the subsequent months, including July and August 2021. The landlord stated their desire to update the claimed amount to add additional rent; this is \$2,200 for each of July and August 2021. This brings the total amount of rent owing to \$7,945.02.

The landlord also presented that the outstanding utility amount for water carried over into their 2020 property taxes. This amount was \$928.50, inclusive of a \$40 charge by the regional district for the fee of transferring the amount to taxes, as well as interest. For reference, they included a copy of the \$863.50 outstanding bill, as well as their notice to the tenants on December 27, 2020 that it required immediate payment.

The tenant added the amount of \$1,014.64 for the current water bill that remains outstanding. For reference they included a bill dated July 7, 2021 showing the amount from May 1 – June 25, 2021, for \$821.75. In the hearing they presented their claimed amount is an estimate from the regional district office, adding another \$192.98 based on previous usage.

Analysis

I accept the undisputed evidence before me that the tenants failed to pay the rent owed in full by June 7, 2021, within the five days granted under 46(4) of the *Act*. The tenants did not dispute the 10-Day Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10-Day Notice, June 16, 2021. With the 10-Day Notice meeting the s. 52 requirements for form and content, I find the landlord is entitled to an Order of Possession via s. 55 of the *Act*.

The landlord provided testimony on the account in question and the accumulation of the amount. As presented, I find the amount of \$7,945.02 is accurate. By Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I accept the landlord's amendment to their Application wherein they added the subsequent months' rent in this situation where the tenants are overholding. The hearing itself was scheduled on August 16, 2021, and the landlord stated that the tenants were still living in the rental unit on that date. The tenants have been overholding since the effective date of the end of tenancy, June 16, 2021. For this reason, I grant the landlord the full monthly rental amounts of \$2,200.00 for July and August 2021. The tenants did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount.

For utilities, I find the landlord presented sufficient evidence to show that the tenants are still owing the amount of \$928.50. I so order the tenants to pay this outstanding amount to the landlord. While the landlord has presented that there is an updated current water bill owing, they did not provide sufficient evidence to show the current bill has accumulated interest beyond what they presented in the bill dated July 7, 2021. There is nothing documented to show the accumulation of interest; therefore, I grant only what the landlord presented as a current water bill remaining unpaid, for the amount of \$821.75.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$9,695.27. After setting off the \$1,100 security deposit, there is a balance of \$8,595.27. I am authorizing the landlord to keep the security deposit amount and award the balance of \$8,595.27 as compensation for the rent and utility amounts.

As above, I find the landlord is entitled to an Order of Possession. I award the amount of \$8,595.27 for outstanding rent and utility amounts owing by the tenants. As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee they paid for this Application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$8,695.27 for monetary compensation and a recovery of the filing fee for this Application. The landlord is provided with this Order in the above terms and they must serve it to the tenants as soon as possible. Should the tenants fail to comply with this Order, the landlord may file this Order in the Small Claims Division of the Provincial Court where it may be 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 *Act*.

Dated: August 19, 2021

Residential Tenancy Branch