



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

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 section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit (the deposit) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:10 a.m. to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord entered written evidence from his agent and sworn testimony that his agent posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenants' door at 4:55 p.m. on April 22, 2021 in the presence of a witness. I am satisfied that the landlord's agent served this Notice to the tenants in accordance with section 88 of the *Act*. In accordance with section 90 of the *Act*, the 10 Day Notice was deemed served to the tenants on April 25, 2021, the third day after its posting.

The landlords agent gave written evidence and sworn oral testimony that copies of the landlord's dispute resolution hearing package were sent to both tenants by registered mail on May 21, 2021. The landlord entered into written evidence copies of the Canada Post Tracking Numbers and receipt. In accordance with sections 89 and 90 of the *Act*, I

am satisfied that both tenants were deemed served with the landlord's dispute resolution hearing packages on May 26, 2021, five days after being mailed.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' deposits in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenancy began on or about September 1, 2016. Rent in the amount of \$2300.00 is payable in advance on the first day of each month. The landlord holds a security deposit of \$1150.00. The tenants failed to pay rent in the month of September 2020. The landlord's agent testified that they tried to work with the tenant as they were making some partial payments however the unpaid balance was growing faster than the payments.

On April 22, 2021 the landlord served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord advised that as of today's hearing the amount of unpaid rent is 26,100.00 cover unpaid amounts since September 2020 and provided a breakdown as part of their evidentiary package.

Analysis

The tenants failed to pay their rent in full within five days of being deemed to have received the 10 Day Notices. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received 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 their tenancy on the corrected effective date of the notice.

In this case, this required the tenants to vacate the premises by May 5, 2021. As that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant(s). 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.

Based on the undisputed evidence provided by the landlords agent, I am satisfied that the tenants continue to owe the landlord unpaid rent in the amount of \$26,100.00. Using the offsetting provision under Section 72 of the Act, I hereby apply the security deposit against the amount of unpaid rent. I issue a monetary award in the landlord's favour in the amount of \$25,350.00.

Conclusion

The landlord is granted an order of possession and a monetary order for \$25,350.00 after retaining the security deposit.

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: September 14, 2021

Residential Tenancy Branch