



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: OPU-PP, FFL**
 TT: CNR-MT

Introduction

This hearing dealt with applications from both the landlords and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlords, ZW and RM named the respondents TM and ZM and applied for:

- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

The tenant TM named the respondent landlord MM and applied for:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 66;
- cancellation of a 10 Day pursuant to section 46; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlords ZW and RM attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlords testified that they served the tenants with the notice of application and evidence personally on June 10, 2021. Based on the undisputed testimony of the landlords I find the tenants duly served with the landlord's materials on that date in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the tenants entitled to any of the relief sought?

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began on May 1, 2019. The monthly rent is \$1,300.00 payable on the first of each month. The tenancy agreement provides that the tenant is also responsible for paying utilities. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the landlords.

The tenants failed to pay rent as required for several months of the tenancy. The rental arrear arises from both the period between March 18, 2020 and August 17, 2020 and the months thereafter. Pursuant to section 3(2) of the COVID-19 (Residential tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (the "C19 Regulation") the landlords issued a valid rent repayment plan for the overdue rent that became payable during the specified period.

The tenants have continued to fail to pay full rent and utilities as required under the tenancy agreement for the months after the specified period. The landlords issued a written demand for payment of the utilities each month with the tenants failing to make full payment as required. There was a rental arrear of \$4,630.00 and utility arrear of \$400.00 as at May 18, 2021 when the landlord issued their 10 Day Notice.

The landlords testified that they served the 10 Day Notice on the tenants by posting on the rental unit door on that date. The landlords gave evidence that the tenants have failed to pay full rent as required and any partial payments were noted to be accepted for "use and occupancy" only and did not reinstate the tenancy.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

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.

Consequently I dismiss the tenants' application in its entirety without leave to reapply.

Section 55 of the *Act* provides that:

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.

I have dismissed the tenants' application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end. I am satisfied with the landlords' evidence by way of their testimony, tenant ledger and correspondence that there is an arrear for this tenancy giving rise to a basis for the issuance of a 10 Day Notice.

Therefore, I find that the landlords are entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

As the landlords were successful in their application they are also entitled to recover the filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary award issued in the landlords' favour.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants or any occupant 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.

The security deposit for this tenancy is reduced by \$100.00 from \$600.00 to \$500.00.

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 27, 2021

Residential Tenancy Branch