



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1188167 BC Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNRL-S, OPC, FFL

Introduction

The landlord filed an Application for Dispute Resolution on July 1, 2021 seeking an order of possession, and recovery of the money for unpaid rent, and the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on October 28, 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 all hearing; the tenants did not attend.

Preliminary Matter

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 prove that they served that document at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

At the time the landlord applied, the tenants still occupied the rental unit. The landlord utilized Canada Post registered mail to send the notice of this hearing, each separately to the two tenants. One package to one of the tenants was not delivered with unknown whereabouts and marked as returned; the other was recorded as delivered. They provided Canada Post registered mail tracking numbers for each of these two pieces; this information appears in the landlord’s evidence.

I accept this evidence that the landlord's package was sent to each tenant via registered mail. Based on the submissions of the landlord, I accept they served notice of this hearing and evidence in a manner complying with s. 89(1)(c) of the *Act*, and the hearing proceeded in the tenant's absence.

Issues to be Decided

Is the landlord entitled to an Order of Possession, pursuant to s. 55 of the *Act*?

Is the landlord entitled to compensation for unpaid rent, 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

The landlord provided a copy of the tenancy agreement and spoke to its relevant terms in the hearing. The parties signed the agreement on June 18, 2020 for the tenancy starting on July 1, 2020. The monthly rent was \$1,200 payable on the first of each month. The tenants paid a security deposit and pet damage deposit of \$600 each on June 30, 2020.

At the outset of the hearing, the landlord provided that the tenants moved out from the rental unit on October 18, 2021. The tenants did not provide forwarding address information to the landlord. The landlord received a message that "keys were dropped off" in the property office. The landlord on that date also sent more information to the tenants concerning this hearing early on that same morning. This was prior to their receiving notice that the keys were returned.

On their Application, the landlord sought the Order of Possession based on the One-Month Notice to End Tenancy they issued on June 7, 2021. Their end-of-tenancy date is indicated to be July 31, 2021. This was for the tenants' repeated late payment of rent. In the 'details' section of the document, the landlord listed March 3, May 3, and June 4, 2021 as dates on which they issued prior 10-Day Notices to End Tenancy for Unpaid Rent. In each case, the tenants made their rent payment shortly thereafter.

The reason for the landlord issuing this One-Month Notice was for repeated late payment of rent.

The tenants did not challenge this One-Month Notice within 10 days as provided for on the face of the document. On this basis, the landlord applied for the Order of Possession.

The landlord amended their claim on October 19, 2021, to add their claim for recovery of the rent amounts owing. This was the day after the tenants left the rental unit. This amended claim was for rent accumulated for August, September and October. This amount is \$3,600.

The 'Monetary Order Worksheet' was signed by the landlord on October 18, 2021. The amount on this worksheet is \$3,600. In their evidence, the landlord provided the updated ledger as of October 18, 2021. This information to the tenants was in registered mail the landlord sent to each tenant earlier that same morning prior to the tenants notifying the landlord they left the keys in the office.

Analysis

The *Act* s. 47 allows a landlord to end a tenancy by giving notice to end the tenancy where the tenants are repeatedly late paying rent.

Following this, s. 47(4) allows a tenant who receives a notice to end tenancy 10 days to submit an Application for Dispute Resolution to cancel the notice. Then, s. 47(5) stipulates that if a tenant fails to apply within 10 days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and they must vacate the rental unit.

I have reviewed the Notice, and I find it complies with the form and content requirements of s. 52 of the *Act*. I find that the tenants did not dispute the Notice within ten days, pursuant to s. 47(4). I find that the tenant is conclusively presumed to have accepted that the tenancy has ended in accordance with s. 47(5). I grant the landlord's request for an Order of Possession under s. 55 of the *Act*. This is a measure of surety to the landlord, should the tenants choose to return to the rental unit given that they departed relatively near the date of the hearing.

The Residential Tenancy Branch Rules of Procedure provide the stated objective of the entire dispute resolution procedure. This is to “ensure a fair, efficient and consistent process for resolving disputes for landlord and tenants.” Rule 4 gives the process for amending a claim. The Applicant may so amend their application by submitting the required form and ensure service to the respondents as soon as possible and no less than 14 days before the hearing.

In this instance, the landlord filed a monetary order worksheet that is on its own their amendment to the Application. This is for rent amounts accumulated since their original Application on July 1, 2021. I find this amount was served by the landlord based on the information available to them at the time they added this piece to their Application. This is hours before they received notice of the tenants’ move out. I find the landlord shall not be prejudiced by that very short period of notice from the tenants, and without any forwarding address information in place.

In the alternative, the *Residential Tenancy Branch Rules of the Procedure* provide for an amendment at the hearing. This is where there are “circumstances that can reasonably be anticipated.” I find these circumstances present here fit into this category, and so allow the landlord’s amended claim for payment of rent owing. The non-payment of rent is a breach of s. 26 of the *Act* and the tenancy agreement. The landlord’s loss results from this breach; therefore, compensation to the landlord is in order.

The landlord properly made a claim against the security and pet deposits and had the right to do so. The landlord is holding the deposit amount of \$1,200 total. I order this amount deducted from the recovery of the rent amount \$3,600. This is an application of section 72(2)(b) of the *Act*.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **TWO DAYS after service of this Order** on the tenant. Should the tenant 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 s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2,500 for the rent owing, and recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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 s. 9.1(1) of the *Act*.

Dated: October 29, 2021

Residential Tenancy Branch