



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenants 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 landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was 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 landlord testified that they served each of the tenants with the Interim Decision and Notice of Hearing personally on June 21, 2021 in the presence of a witness. The landlord submitted into evidence a signed statement from a witness attesting that they observed the landlord serving the tenants. Based on the undisputed evidence of the landlord I find that each of the tenants was duly served with the Interim Decision and Notice of Hearing on June 21, 2021 in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began on January 1, 2021. The monthly rent is \$2,700.00 payable on the first of each month. The tenants failed to provide any deposits for this tenancy. The landlord confirmed the full address of the rental unit.

The landlord submits that the tenant failed to pay rent as required under the signed tenancy agreement on May 1, 2021 and there was an arrear of \$2,700.00 on May 7, 2021. The landlord issued a 10 Day Notice on that date. The landlord gave evidence that they served the tenants with the 10 Day Notice by leaving a copy in the mailbox of the tenants on May 11, 2021. The landlord provided copies of the 10 Day Notice and signed Proof of Service form into evidence.

The landlord submits that the tenants failed to make full payment of the rental arrear within 5 days of service or at all. The landlord issued receipts for any subsequent payments made by the tenants indicating that they were accepted for use and occupancy only and did not reinstate the tenancy.

The landlord testified that as of October 4, 2021, the date of the hearing there is a rental arrear of \$11,316.46. The landlord submitted copies of receipts issued to the tenants for partial payments and gave a detailed accounting of the amounts unpaid.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the tenants were obligated to pay the monthly rent in the amount of \$2,700.00 pursuant to the signed tenancy agreement. I accept the evidence before me that the tenants failed to pay the full rent on May 1, 2021 and there was a basis for the landlord to issue a 10 Day Notice. I accept the undisputed evidence of the landlord that they left a copy of the 10 Day Notice in the mailbox at the dispute address where the tenants reside on May 11, 2021. Accordingly, I find that the tenants are deemed served

with the 10 Day Notice on May 14, 2021, three days after it was placed in the mailbox, in accordance with sections 88 and 90 of the *Act*.

Section 46(4) provides that a tenant may pay the overdue rent or file an application to dispute the notice within 5 days of receiving the notice. Section 46(5) provides that a tenant who fails to do so is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

I accept the landlord's evidence that the tenant did not pay the full amount of rent due within the 5 days of May 14, 2021, the date the tenants are deemed served with the notice. Therefore, I find that the tenants are conclusively presumed to have accepted that the tenancy ends on the corrected effective date of the notice, May 24, 2021 and I issue an Order of Possession in the landlord's favour pursuant to section 55 of the *Act*. As the effective date of the notice has passed I issue an Order effective 2 days after service on the tenants.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$11,316.46. I am satisfied with the landlord's evidence including their cogent testimony and documentary materials by way of receipts issued. I issue a monetary award for unpaid rent owing of \$11,316.46 as at October 4, 2021, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord 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.

I issue a monetary order in the landlord's favour in the amount of \$11,416.46, allowing for the recovery of the rental arrear and filing fee. 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: October 4, 2021

Residential Tenancy Branch