



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On June 30, 2021, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the Act) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I find that the tracking number provided by the landlord with the Proof of Service Notice to End Tenancy is for a package sent by Canada Post's Express post mailing, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, Canada Post's online tracking system shows that a signature was not required for the delivery of this Express post mailing and, as such, it does not meet the definition of registered mail as defined under the Act.

I have been delegated authority under the Act to consider the landlord's application for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent, VS ("landlord")

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 testified he sent each of the tenants a notice of reconvened hearing package which includes a copy of the interim decision via registered mail to the rental unit address on July 2, 2021. The landlord testified that each package was returned to her as unclaimed. Tracking numbers for each of the mailings is provided on the cover page of this decision. I deem the tenants served with the notice of reconvened hearing packages five days after being sent by registered mail, on July 7, 2021 in accordance with sections 89 and 90 of the *Act*.

This hearing proceeded in the absence of the tenants pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The landlord filed an amendment to the direct request proceedings seeking additional monetary claims for damages to the unit and fines from the strata corporation. I determined that these additional claims were unrelated to the landlord's original direct request application seeking an order of possession for unpaid rent and a monetary order for the same unpaid rent. Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. I exercised my authority to sever these additional monetary claims and granted leave for the landlord to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenants on July 16, 2019, indicating a monthly rent of \$1,600.00, due on the first day of each month for a tenancy commencing on July 16, 2019
- A copy of a Repayment Plan dated August 24, 2020 indicating the tenants would be responsible for repayment of affected rent in monthly installments of \$500.00 starting on October 1, 2020
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 8, 2021, for \$1,600.00 in unpaid rent and \$500.00 in unpaid affected rent repayment. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of April 23, 2021
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenants by registered mail at 10:28 am on April 13, 2021
- A copy of a Canada Post receipt containing the tracking number to confirm the 10 Day Notice was in fact sent to the tenants on April 8, 2021
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

The landlord testified that the tenants failed to pay the \$1,600.00 rent for the month of April, due on April 1, 2021 or the \$500.00 owed in accordance with the repayment plan entered into between the parties. On April 8, 2021, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by sending it to the tenants via ExpressPost delivery through Canada Post. Although they neglected to seek a signature for service, the landlord submits the tenants were aware of the notice to end tenancy since they had filed an application for dispute resolution on April 21st. The file number for the tenant's application is recorded on the cover page of this decision.

With the landlord's consent, I consulted the Residential Tenancy Branch's dispute management system and reviewed the tenant's application and the arbitrator's decision. I note in the tenant's description of evidence, the tenant provides the following item: **10 day eviction notice** - 10 day eviction notice for non-payment of rent served on April 8 2021. I further note that the tenants did not attend the hearing of their application seeking an order that the landlord comply with the *Act* and the application was dismissed without leave to reapply by the arbitrator.

The landlord testified that subsequent to serving the notice to end tenancy, the tenants have not paid any rent to the landlord. The tenants also continue to occupy the rental unit. Although the arrears continue to accrue, the landlord sought that their application for a monetary order for unpaid rent be dismissed with leave to reapply since the

landlord wanted to have a monetary order inclusive of the arrears incurred by the tenants during the Covid-19 state of emergency.

Analysis

Based on the fact that the tenants filed an application for dispute resolution and stated that they received the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on April 8, 2021, I deem the notice served on that date in accordance with section 71 of the *Act*. I have reviewed the landlord's 10 Day Notice and I am satisfied it complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

Sections 46(4) and (5) of the *Act* state:

(4) Within 5 days after receiving a notice under this section, the tenant may

- a. pay the overdue rent, in which case the notice has no effect, or
- b. dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- a. is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- b. must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and evidence before me, I find that the tenants were served with an effective notice and did not file an application to dispute it within the five days. Therefore, the tenants are conclusively presumed to have accepted the tenancy ended on the corrected effective date of April 18, 2021 and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the *Act*.

The landlord's application seeking a monetary order for unpaid rent is dismissed with leave to reapply.

The amendment to the landlord's application seeking additional monetary orders is dismissed with leave to reapply.

As the landlord's application was successful, the landlord is entitled to recovery of the \$100.00 filing fee for this application. In accordance with the offsetting provisions of

section 72 of the *Act*, I order the landlord to retain \$100.00 of the tenants' security deposit in satisfaction of the monetary claim.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

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 08, 2021

Residential Tenancy Branch