



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 23 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:23 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent stated that he was the housing services manager for the landlord company ("landlord") named in this application and that he had permission to speak on its behalf. He said that the landlord owns the rental unit. He confirmed the rental unit address and provided an email for me to send this decision to the landlord after the hearing.

At the outset of this hearing, I informed the landlord's agent that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure*.

I explained the hearing process to the landlord's agent. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord's paper application only, not any participation by the tenants. An "interim decision," dated November 5, 2021, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing, dated November 8, 2021, to both tenants. The landlord's agent testified that both tenants were served with two copies of the above documents on November 9, 2021, both by way of registered mail to the rental unit address where the tenants are still residing. The landlord provided two Canada Post receipts and the landlord's agent confirmed both tracking numbers verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the interim decision and notice of reconvened hearing on November 14, 2021, five days after their registered mailings.

The landlord's agent claimed that both tenants were served with two copies of the landlord's original application for dispute resolution by direct request on October 6, 2021, both by way of registered mail to the rental unit address where the tenants are still residing. The landlord provided two Canada Post receipts and the landlord's agent confirmed both tracking numbers verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with landlord's original application on October 11, 2021, five days after their registered mailings.

The landlord's agent stated that both tenants were served with a copy of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 8, 2021 ("10 Day Notice") on the same date, by way of registered mail to the rental unit address where the tenants are still residing. The landlord provided a Canada Post receipt and the landlord's agent confirmed the tracking number verbally during this hearing. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with landlord's 10 Day Notice on September 13, 2021, five days after its registered mailing.

Issues to be Decided

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

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

Background and Evidence

The landlord's agent testified regarding the following facts. This tenancy began on August 1, 2019. Monthly rent in the amount of \$1,236.00 was payable on the first day of each month from March 1, 2021 to October 31, 2021. Monthly rent in the amount of \$716.00 is payable on the first day of each month from November 1, 2021, to present. Rent is subsidized based on the tenants completing annual rent subsidy applications. The landlord provided a copy of a letter, dated July 22, 2021, regarding the tenant's rent contribution amount of \$1,236.00 per month, as of September 1, 2021. The tenants filled out a new rent subsidy application for a new rent, effective November 1, 2021. A security deposit of \$625.00 and a pet damage deposit of \$625.00 were paid by the tenants and the landlord continues to retain both deposits. A written tenancy agreement was not signed, as only a verbal agreement was reached. The tenants continue to reside in the rental unit.

The landlord's agent stated the following facts. The landlord issued the 10 Day Notice, with an effective move-out date of September 23, 2021, indicating that rent in the amount of \$2,740.00 was due on September 1, 2021. A copy of the notice was provided. Rent of \$268.00 was due for July 2021, and rent of \$1,236.00 was due for each month from August to September 2021, totalling \$2,740.00.

The landlord's agent testified regarding the following facts. The tenants paid rent of \$200.00 on October 5, \$200.00 on October 6, \$1,000.00 on October 15, \$716.00 on October 29, \$200.00 on November 12, and \$700.00 on December 7, 2021. The landlord issued rent receipts indicating "use and occupancy only" to the tenants for the above partial rent payments. The tenants still owe outstanding rent of \$160.00 for October, \$716.00 for November, and \$716.00 for December 2021.

The landlord's agent stated the following facts. He spoke to the tenants on September 10, 2021, to inform them of their rental arrears. The tenants told him they were in financial hardship. Throughout October 2021, he had multiple verbal conversations with the tenants about their rental arrears. On November 4, 2021, the landlord's agent discussed a rent repayment plan with the tenants, for them to pay \$200.00 every two

weeks in November and December 2021, in addition to rent of \$716.00 per month. However, the tenants did not pay according to this repayment plan. He did not receive any correspondence from the tenants since November 30, 2021.

The landlord's agent confirmed that the landlord is seeking a 2-day order of possession based on the 10 Day Notice and recovery of the \$100.00 application filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the two tenants did not attend. The tenants failed to pay the full rent due on September 1, 2021, within five days of being deemed to have received the 10 Day Notice on September 13, 2021. Even though the tenants made partial rent payments in October, November and December 2021, the tenants did not pay the full September 2021 rent owed within the five-day period. The tenants have not made an application pursuant to section 46(4) of the *Act* within the five-day period.

In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of these actions within five days led to the end of this tenancy on September 23, 2021, the effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by September 23, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive its right to enforce the 10 Day Notice, by accepting partial rent from the tenants after the effective date of September 23, 2021, on the notice. I accept the testimony of the landlord's agent that the landlord issued "use and occupancy" only receipts to the tenants. The tenants did not pay the full rent after the effective date of the notice. The landlord's agent had multiple conversations with the tenants regarding their rental arrears. The landlord did not cancel this hearing or withdraw this application. The landlord pursued an order of possession based on the 10 Day Notice, at this hearing, which the tenants did not attend. I find that the landlord's express conduct indicated that it was pursuing an eviction of the tenants based on the 10 Day Notice, despite accepting partial rent from the tenants after the effective date of the notice.

As the landlord was successful in this application, I find that it is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$625.00. No interest is payable on the deposit over the period of this tenancy. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$100.00 from the tenants' security deposit of \$625.00, in full satisfaction of the monetary award for the filing fee. The remainder of the tenants' security deposit of \$525.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service of this Order** on the tenant(s). Should the tenant(s) or anyone 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 order the landlord to retain \$100.00 from the tenants' security deposit of \$625.00, in full satisfaction of the monetary award for the filing fee. The remainder of the tenants' security deposit of \$525.00 is to be dealt with at the end of this tenancy in accordance with section 38 of the *Act*.

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: December 21, 2021

Residential Tenancy Branch