



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-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 and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants, "tenant MC" and "tenant JO," did not attend this hearing, which lasted approximately 40 minutes. The landlord 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 11:40 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 and I were the only people who called into this teleconference.

The landlord confirmed his name, spelling, and the rental unit address. He provided an email address for me to send this decision to him after the hearing.

The landlord confirmed that his parents own the rental unit. He stated that he had permission to speak on their behalf at this hearing. He said that his parents are named as the landlords in the written tenancy agreement with the tenants. He confirmed that he has been acting as the landlord's agent on behalf of his parents, for any tenancy-related issues with the tenants.

At the outset of this hearing, I informed the landlord that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure*. The landlord affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord. He had an opportunity to ask questions, which I answered. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with this hearing.

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 tenant. An "interim decision," dated October 22, 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 to the tenants. The landlord stated that he served both tenants with two copies of the above documents on October 25, 2021, both by way of registered mail to the rental unit address. The landlord provided two Canada Post receipts and 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 two copies of the interim decision and notice of reconvened hearing on October 30, 2021, five days after their registered mailings.

The landlord claimed that both tenants were served with two copies of the landlord's original application for dispute resolution by direct request on September 24, 2021, both by way of registered mail to the rental unit address. The landlord provided two Canada Post receipts and 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 two copies of the landlord's original application on September 29, 2021, five days after their registered mailings.

The landlord stated that both tenants were served with the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 18, 2021 ("first 10 Day Notice") on August 19, 2021, by way of leaving a copy in the tenants' mailbox at the rental unit address. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 88 and 90 of the *Act*, I find that both tenants

were deemed served with the landlord's first 10 Day Notice on August 22, 2021, three days after leaving it in the mailbox.

The landlord stated that both tenants were served with the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 1, 2021 ("second 10 Day Notice") on the same date, by way of leaving a copy in the tenants' mailbox at the rental unit address. The landlord provided a signed, witnessed proof of service with this application. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's second 10 Day Notice on September 4, 2021, three days after leaving it in the mailbox.

During this hearing, the landlord confirmed that he did not want to pursue any of his monetary claims for unpaid rent, utilities, or the \$100.00 application filing fee. He said that he knows the tenants will not pay anything to him, so he just wants an order of possession for them to leave the rental unit. I informed him that he could not reapply for these claims in the future, and that these portions of the landlord's application were dismissed without leave to reapply. He confirmed his understanding of same.

Issue to be Decided

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

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on August 15, 2021. Monthly rent in the amount of \$2,750.00 is payable on the first day of each month. A security deposit of \$1,350.00 was paid by the tenants and the landlord applied it towards partial unpaid rent for November 2021, at the request of the tenants. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. Tenant MC moved out of the rental unit in early November 2021. Tenant JO continues to reside in the rental unit.

The landlord issued the first 10 Day Notice, which he confirmed has an effective move-out date of August 29, 2021, indicating that rent in the amount of \$1,375.00 was due on August 15, 2021. The landlord provided a copy of this notice. He stated that the tenants moved in on August 15, 2021, so they only owed prorated rent of \$1,375.00 for half a month from August 15 to 31, 2021. He said that the tenants paid \$500.00 on August 20 and \$800.00 on August 31, so the balance owing for August 2021 is \$75.00, which is still unpaid.

The landlord issued the second 10 Day Notice, which he confirmed has an effective move-out date of September 10, 2021, indicating that rent in the amount of \$2,825.00 was due on September 10, 2021. The landlord provided a copy of this notice. He said that this includes an unpaid rent balance of \$75.00 from August 2021, and a full month's rent of \$2,750.00 for September 2021. He claimed that the tenants paid \$2,000.00 on September 7 and \$300.00 on September 8, so the balance owing for September 2021 is \$525.00, which is still unpaid. The landlord confirmed that partial rent is still outstanding from October 2021 to January 2022, from both tenants.

The landlord confirmed that he is seeking an order of possession against the tenants, based on the 10 Day Notice.

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 August 15, 2021, and September 10, 2021, within five days of being deemed to have received the two 10 Day Notices. Even though the tenants made partial rent payments in August and September 2021, the tenants did not pay the full August and 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 five days of being deemed to have received the two 10 Day Notices.

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 1, 2021, the corrected effective date on the first 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by September 1, 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 two 10 Day Notices comply with section 52 of the *Act*.

I find that the landlord did not waive his right to enforce the two 10 Day Notices, by accepting partial rent from the tenants after the effective dates of August 29, 2021 and September 10, 2021, on the two notices. The landlord did not cancel this hearing or withdraw this application. The landlord pursued an order of possession based on the two 10 Day Notices, at this hearing.

I find that the landlord's express conduct indicated that he was pursuing an eviction of the tenants based on the two 10 Day Notices, despite accepting partial rent from them after the effective dates of the two notices. The tenants have failed to pay full rent from August 2021 to January 2022, to the landlord.

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.

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: January 31, 2022

Residential Tenancy Branch