



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: PSF, LRE, RR, MNDCT, OLC**
 LL: MNR-DR, OPR-DR, MNDCL-S

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to retain all or a portion of the tenant’s security deposit pursuant to section 38.

The tenants applied for:

- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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 the tenants with the notice of hearing and evidence by registered mail sent on November 26, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenants are deemed served with the landlord's materials on December 1, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord noted a typographic error in the spelling of their name in their application and provided the correct name. The corrected name is used in the style of cause for this decision and accompanying orders.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Are the tenants entitled to any of the relief sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The landlord gave undisputed evidence regarding the following facts. The monthly rent for this periodic tenancy is \$1,900.00 payable on the first of each month. A security deposit of \$850.00 was collected at the start of the tenancy and is still held by the landlord.

The tenants failed to pay full rent as required under the tenancy agreement on September 1, 2021 and the landlord issued a 10 Day Notice dated September 15, 2021. The notice was personally served on the tenants on that date. A signed Proof of Service form was submitted into documentary evidence.

The landlord testified that the tenants did not pay the full amount of the arrear or file an application to dispute the notice within 5 days or at all. The landlord submits that any payments subsequently received were indicated to be for use and occupancy only and did not reinstate the tenancy. The landlord testified that the total arrear as of the date of the hearing, March 8, 2022 is \$9,700.00.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 9:30 am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to re-apply.

Consequently, I dismiss the tenants' application in its entirety without leave to reapply.

I find that there is an enforceable tenancy agreement between the parties obligating the tenants to pay monthly rent of \$1,900.00 on the first of each month. I accept the evidence of the landlord that the tenants failed to pay rent as required on September 1, 2021 and there was a basis for the landlord to issue the 10 Day Notice. I accept the evidence that the 10 Day Notice was personally served on the tenants on September 15, 2021.

I accept the landlord's evidence that the tenant did not pay the full amount of rent due within the 5 days of service granted under section 46(4) of the *Act* nor did they file an application to dispute the notice. I accept the landlord's evidence that any subsequent payments were clearly indicated to the tenants to be for use and occupancy and did not reinstate the tenancy. Therefore, in accordance with section 46(5) I find the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and the landlord is entitled to an Order of Possession, pursuant to section 55. As the effective date of the notice has passed I issue an Order enforceable 2 days after service.

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 \$9,700.00. I issue a monetary award for unpaid rent owing of \$9,700.00 as at March 8, 2022, the date of the hearing, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

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 \$8,850.00. 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: March 8, 2022

Residential Tenancy Branch