



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, MNRL-S**

Introduction

This hearing 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 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.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member (the "landlord"). The tenant KG (the "tenant") primarily spoke on behalf of the tenants.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenant testified that they received the landlords' materials and had not served any materials of their own. Based on the testimonies I find the tenants duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Are the landlords entitled to a Monetary Award as claimed?

Are the landlords entitled to recover their filing fee from the tenants?

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 parties agree on the following facts. This periodic tenancy began on April 1, 2021. The monthly rent is \$1,250.00 payable on the first of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the landlords. The tenants failed to pay rent as required on November 1, 2021. The landlord issued a 10 Day Notice dated November 20, 2021 which was served on the tenants by posting on the rental unit door on November 21, 2021.

The tenants confirmed receipt of the notice. The tenants did not file an application to dispute the notice, nor did they pay the full amount of the arrear within 5 days of receipt of the notice. The parties agreed that the tenants failed to pay rent as required on December 1, 2021. The tenants made some payment of the arrears on March 24, 2022 and there is presently a total rental arrear of \$300.00.

The parties agree that the tenants made payment of rent for the months of January, February and March, 2022. The parties agree that the landlord informed the tenants that the payments were accepted for use and occupancy only and did not reinstate the tenancy.

Analysis

Based on the undisputed evidence, I find that there is a valid tenancy agreement between the parties under which the tenants were obligated to pay the monthly rent in the amount of \$1,250.00 on the first of each month. I accept the evidence before me that the tenants failed to pay the full rent on November 1, 2021 and there was a basis for the landlord to issue a 10 Day Notice. I accept the evidence of the tenants that they were served with the 10 Day Notice on November 21, 2021.

I accept the undisputed evidence of the parties that the tenants 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 evidence of both parties that any subsequent payments were clearly indicated to the tenants to be for use and occupancy and did not reinstate the tenancy. Therefore, I find that the landlords

are entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the notice has passed, I issue an Order enforceable 2 days after service.

I accept the undisputed evidence of the parties that the total amount of arrears for this tenancy, as at March 25, 2022 the date of the hearing, is \$300.00. I issue a monetary award for unpaid rent owing of \$300.00 pursuant to section 67 of the *Act*.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$400.00 of the tenants' \$625.00 security deposit in full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant 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.

The security deposit for this tenancy is reduced by \$400.00 from \$625.00 to \$225.00.

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 25, 2022

Residential Tenancy Branch