



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR-DR, FFL

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied on January 7, 2022 for an Order cancelling a notice to end tenancy pursuant to Section 46.

The Landlord applied on January 13, 2022 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing to pursue their claim. The Landlord was not served with the Tenants’ application. For these reasons I dismiss the Tenants’ application. I accept the Landlord’s evidence that each Tenant was served with the Landlord’s application for dispute resolution, notice of hearing and evidence by registered mail on January 26, 2022 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Hearing Package on January 31, 2022. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on October 15, 2020. Rent of \$1,925.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$962.50 as a security deposit. The Tenants failed to pay rent for January 2022 and on January 3, 2022 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent dated January 2, 2022 (the "Notice") by placing the Notice in the mailbox. The Tenants have not paid the outstanding rent, have not moved out of the unit and have not paid any further rents since the Notice was given.

Analysis

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given that the required form and content is contained on the Notice and given the dismissal of the Tenants' application I find that the Landlord is entitled to an order of possession. I grant the Landlord an order of possession effective two days after service of the order on the Tenants.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Based on the Landlord's evidence, I find that the Tenants have failed to pay rent as required under the tenancy agreement and that the Landlord is entitled to unpaid rent for January, February and March 2022 of **\$5,775.00**. The Landlord remains at liberty to make a claim for any further unpaid rent to the date the Tenants vacate the unit. As the application is successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,875.00**. Deducting the security deposit of **\$962.50** plus zero interest from the entitlement leaves **\$4,912.50** owed by the Tenants to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective two days after service on the Tenants. The Tenants must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$962.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,912.50**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: April 05, 2022

Residential Tenancy Branch