



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: CNR FFT

LL: OPU-DR, MNU-DR, FFL

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 and utilities pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing dealt with the tenant’s application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- authorization to recover the filing fee for this application from the landlord 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 represented by counsel.

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 parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim as additional rent and utilities have come due and owing since the filing of the application. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable, I amend the landlord's application to increase their monetary claim to 12,906.92.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to recover the filing fee from the other?

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 tenancy began a few years ago. The current monthly rent is \$2,500.00 payable on the first of each month. The tenant is also required to pay utilities for the rental unit to the landlord. The landlord holds a security deposit of \$1,250.00.

The parties agree that the tenant failed to pay full rent as required on December 1, 2021 and January 1, 2022 and there was a rental arrear of \$4,732.89 as at January 17, 2022, the date of the 10 Day Notice. The tenants submit that they have previously failed to pay rent on the date it is due and believed this gave rise to the ability to not make payments as required under the tenancy agreement. There was a previous hearing under the file number on the first page of this decision in which the tenants submit they were authorized to no longer pay rent as required under the tenancy agreement.

The parties agree that as at the date of the hearing there is a total arrear of rent and unpaid utilities of \$12,906.92. The parties agree that the landlord has given written notice that the utilities are owing and payable.

Analysis

Section 46(1) of the *Act* establishes that a landlord may end a tenancy for unpaid rent “by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.”

I find that the pursuant to section 26(1) of the *Act* and the tenancy agreement, the tenant was obligated to pay the monthly rent in the amount of \$2,500.00. I accept the parties’ undisputed evidence that the tenant failed to pay the full rent on December 1, 2021 and January 1, 2022. I accept the undisputed evidence of the parties that the tenants failed to pay the full rent due within the 5 days after being served on January 17, 2022, granted under section 46(4) of the *Act*.

I do not find the tenant’s submission that the landlord is estopped from requiring payment of rent pursuant to the tenancy agreement to be persuasive or a correct interpretation of the decision of January 11, 2022. In the earlier decision the presiding arbitrator notes that there has been a pattern of accepting late payments from the tenants which estopped them from seeking an Order of Possession on the basis of repeated late payments of rent.

In the present case the tenants have failed to make payment of any rent. This is not a case of the tenants making late payments but a situation where the tenants have failed to make any payments as required under the tenancy agreement, giving rise to the issuance of a 10 Day Notice pursuant to section 46(1).

I find that the 10 Day Notice conforms to the form and content requirements of section 52 of the *Act*, as it is signed and dated by the landlord, provides the address of the rental unit, the effective date of the notice and the grounds for ending the tenancy. I accept the undisputed evidence of the parties that the tenants failed to pay rent or utilities as required under the tenancy agreement and that the landlord had given written demand for payment of the utility charges. Therefore, I find that the landlord is 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 on the tenants.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 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 undisputed evidence of the parties that the total amount of the rent and utility arrear for this tenancy, as at the date of the hearing April 21, 2022, is \$12,906.92. Accordingly, I issue a monetary award in the landlord's favour in that amount.

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

As the landlord was successful in their application, they are entitled to recover the filing fee from the tenants.

Conclusion

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 \$11,756.92, allowing for the recovery of the arrears and the filing fee and to retain the security deposit for this tenancy. 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: April 21, 2022

Residential Tenancy Branch