



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: CNR FFT

LL: OPR-DR, MNR-DR, FFL

Introduction

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

The individual landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants named both the individual and corporate landlords and applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the full duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agents (the “landlord”) who were 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 landlords testified that they served each of the tenants with the notice of hearing and evidence by registered mail sent on March 30, 2022. The landlord submitted valid Canada Post tracking receipts as evidence of service. Based on the undisputed evidence I find that the tenants are each deemed served with the landlord's materials on April 4, 2022, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim in their application saying that additional rent has come due. 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 \$10,765.00.

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.

This periodic tenancy began in November 2020. Monthly rent is \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the landlord. The tenant failed to pay full rent as required from July 1, 2021 onwards and there was an arrear of \$7,765.00 as at March 12, 2022 giving rise to the issuance of the 10 Day Notice. The tenants have failed to pay rent after the issuance of the notice and there is a total arrear of \$10,765.00 as at the date of the hearing.

Analysis

The tenants did not attend the hearing which was scheduled by conference call at 11:00am. 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' applications without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenants' application, and I find that the landlord's 10 Day Notice dated March 12, 2022 complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

I am satisfied with the undisputed evidence that the tenants failed to pay rent as required under the tenancy agreement giving rise to the issuance of the Notice. Accordingly, I find that the landlords are entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find that the tenants were obligated to pay the \$1,500.00 monthly rent pursuant to the tenancy agreement. I accept the landlord's undisputed evidence that the tenants failed to pay the rent as required and there is a total rental arrear of \$10,765.00 as at the date of the hearing. Therefore, I issue a monetary award in the landlords' favour for \$10,765.00 pursuant to section 67 of the *Act*.

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

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

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 \$10,115.00, allowing for the recovery of the rental arrear and 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: May09, 2022

Residential Tenancy Branch