



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNR-DR, OPR-DR, FFL**

Introduction

This hearing, redirected from an ex parte Direct Request proceeding, 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 damages and loss 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 an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was assisted by a family member. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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 respondent FNS provided that they sometimes use the surname of their spouse and are also known as FNK. I have updated the style of cause for this decision and accompanying orders to indicate that the named respondent FNS is one and the same as FNK.

The landlord indicated that since the application was filed 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 \$30,000.00

Issue(s) to be Decided

Is the landlord entitled to 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 parties are in agreement regarding the following facts. There is a valid and enforceable tenancy agreement between the parties. The tenancy originally began in 2016 for a fixed-term and continued thereafter on a month-to-month basis. The parties agree that monthly rent for this tenancy is \$3,300.00 payable on the first of each month. A security deposit of \$1,500.00 was paid at the start of the tenancy and is still held by the landlord.

The parties agree that in 2019 the tenant, with the authorization and knowledge of the landlord, vacated the rental unit and allowed a new occupant (the "Occupant") to take possession of the unit. The parties describe the arrangement as a sublease. A copy of the tenancy agreement was submitted into evidence. The agreement lists both AO and the respondent tenant FNK as an agent of AO as the landlords, with the Occupant as the tenant. The agreement provides that monthly rent of \$5,500.00 is payable on the first of each month and indicates a security deposit of \$2,750.00 and pet damage deposit of \$2,000.00 were collected from the Occupant. The parties submit that despite the respondent FNK being listed as an agent for AO the sublease agreement is between the Occupant and FNK with AO's inclusion meant to signify that they are the original landlord and property owner.

The parties agree that the last payment made by FNK to AO was \$3,000.00 on September 1, 2021. The parties agree that as at the date of the hearing there is a total rental arrear of \$30,000.00.

The tenants submit that they have been unable to make any payment to the landlord as the Occupant, whom they describe as a sublessee, has made no payments to them for some time.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated December 9, 2021 naming FNK as the tenant and indicating an arrear of \$13,500.00. The tenants confirmed receipt of the 10 Day Notice and testified that they have not made full payment of the arrear nor have they filed an application to dispute the notice.

Analysis

I accept the undisputed evidence of the parties that a valid and enforceable tenancy agreement exists between them wherein the tenants are obligated to pay monthly rent in the amount of \$3,300.00 on the first. I further accept the evidence of the parties that the tenant has failed to pay rent as required under the tenancy agreement and there was an arrear of \$13,500.00 as at December 9, 2021 when the 10 Day Notice was issued.

I accept the evidence of the parties that the tenant was served with the 10 Day Notice on December 9, 2021 and they have not paid the arrear in full nor have they filed an application to dispute the notice within 5 days of service or at all.

While the parties provide some evidence regarding a sublease agreement with another occupant of the rental property, I find the possible existence of a sublease to be irrelevant to the matter at hand.

The parties have given undisputed evidence that the tenancy commenced in 2016 has not ended and the tenant remains obligated to pay monthly rent in the amount of \$3,300.00 on the first of each month.

Residential Tenancy Policy Guideline 19 states in relevant parts the following:

When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the sub-tenant enter into a new agreement (referred to as a sublease agreement) ...

... The original tenant remains responsible to the original landlord under the terms of their tenancy agreement for the duration of the sublease agreement...

... The sub-tenant typically pays rent to the original tenant; but even if he or she fails to do so, the original tenant's responsibility to pay rent to the landlord is unaffected and the original tenant can be evicted if rent is not paid.

Accordingly, I find that the named respondent tenants remained responsible for paying rent to the landlord AO. I accept the undisputed evidence of the parties that no rent was paid and there was a valid basis for the issuance of the 10 Day Notice.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a valid 10 Day Notice. Pursuant to subsection 46(5) a tenant who fails to do either is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

Accordingly, I find that the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the 10 Day Notice, December 19, 2021, and issue an Order of Possession in the landlord's favour. 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 undisputed evidence of the parties that there is a rental arrear for this tenancy of \$30,000.00 as at the date of the hearing. I find there is a valid tenancy agreement under which the tenants are obligated to pay rent and they have failed to do so. I find the submissions of the tenant regarding their financial means and non-

payment by sublessees or others does not excuse them from their obligation under the tenancy agreement. Therefore, I issue a monetary award in the landlord's favour in the amount of \$30,000.00.

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

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' 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 \$28,600.00 as against the tenants allowing for recover of the rental arrear and the filing fee and to retain the security deposit. 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: June 30, 2022

Residential Tenancy Branch