



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPC, MNRL, OPN

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 his filing fee for this application from the tenants pursuant to section 72.

The landlord participated in the teleconference, the tenants did not. The landlord gave written evidence and sworn oral testimony that copies of the landlord's dispute resolution hearing package and application was sent to the tenants by registered mail on May 21, 2022. The landlord entered into written evidence copies of the tracking slips, including the Canada Post Tracking Number. Pursuant to sections 89 and 90 of the Act, I find that the tenants were deemed served five days later on May 26, 2022. The landlord also provided tracking slips to show that the documentary evidence was sent to the tenants by registered mail on August 19, 2022 and deemed to have been served on August 24, 2022 pursuant to sections 88 and 90 of the Act. The hearing proceeded and completed in the absence of the tenants.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to a One Month Notice to End Tenancy for Cause?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

The tenancy began on or about November 1, 2020. Rent in the amount of \$2100.00 is payable in advance on the first day of each month. The tenants paid a security deposit of \$1050.00 which the landlord still holds. The landlord issued a One Month Notice to End Tenancy for Cause on March 23, 2022 for the following reasons:

- *repeated late payment of rent.*

The landlord provided documentation that the tenants were late in paying their rent from August 2021 to December 2021. The landlord testified that the tenants have not only been late in paying rent but have stopped paying since December 2021. The landlord testified that as of today's hearing there is \$20, 800.00 in unpaid rent. The landlord requests an order of possession and a monetary order for the unpaid rent and \$100.00 filing fee.

Analysis

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice. The landlord needs only demonstrate that one of the reasons identified in the One Month Notice is valid in order to end a tenancy for cause.

The landlord's documentation clearly shows the tenant's pattern did not change despite being served a notice for late payment of rent. The tenants response has been to stop paying completely.

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late...

There is clear evidence that the written tenancy agreement requires the tenant to pay all of the rent by the first of each month. The evidence presented indicates that the tenants

have been late in paying their rent on at least three occasions and has still not paid their rent for the past 10 months. For these reasons, I am satisfied that there is a recurring pattern of late payment of rent during this tenancy and that the landlord had adequate grounds to issue the One Month Notice for the tenant's late payment of rent.

I find that the landlord's One Month Notice was issued on the correct form and included all of the required information in order to comply with section 52 of the *Act* as to the form and content of that Notice. The landlord is granted an order of possession pursuant to section 55 of the *Act*.

The landlord has also provided sufficient evidence to be granted the unpaid rent of \$20,800.00 as well as the \$100.00 filing fee for a total of \$20,900.00. Although the landlord has not applied to keep the security deposit, using the offsetting provision under section 72 of the *Act*, the landlord is entitled to retain the deposit in partial satisfaction of the claim leaving a balance owing of \$19,850.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord an order under section 67 for the balance due of \$19,850.00. 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 *Residential Tenancy Act*.

Dated: September 13, 2022

Residential Tenancy Branch