



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, MNRL-S, FFL**

Introduction

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for unpaid rent pursuant to sections 46 and 55;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and ended at 9:46 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord’s lawyer and I were the only ones who had called into this teleconference.

The landlords were represented at the hearing by their lawyer, SD (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord stated that on June 15, 2022, he served each of the tenants with their own Notice of Dispute Resolution Hearing Package by posting to the door of their residence, the subject rental unit. Photos of the package contents posted to the door were provided as evidence. I am satisfied the tenants were sufficiently served with the landlord’s application seeking an order of possession and a monetary order on June 18, 2022, three days after being posted to the door, pursuant to sections 71 and 90 of the Act.

This hearing proceeded in the absence of the tenants pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Issue(s) to be Decided

Is the landlord entitled an Order of Possession for unpaid rent?

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

Can the landlord retain the tenants’ security deposit?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following submissions. There was no signed tenancy agreement between the parties. According to the application for dispute resolution, the tenancy began on March 1, 2020, with rent set at \$1,500.00 per month. The landlord testified that rent was due on the first day of each month. A security deposit of \$500.00 was collected from the tenants.

In January, 2022, the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use and this notice was disputed by the tenants. That notice to end tenancy was cancelled at a hearing on April 26, 2022.

The landlord testified that after serving the 2 Month Notice to End Tenancy for Landlord's Use in January, the tenants discontinued paying rent. No rent was paid for February, March, April or May. On May 6, 2022, the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by posting a copy of it to the tenants' door. A witnessed, signed proof of service document was supplied as evidence, as was a copy of the notice to end tenancy.

The landlord's counsel submits that according to the landlords, who live down the street from the rental unit, the tenants have not been seen in the unit and their cars have not been parked in the driveway since near the end of June 2022. The landlords did not serve the tenants with a 24-hour notice of inspection to determine whether the tenants had moved out. The tenants did not provide the landlord with a notice they were moving out and did not provide a forwarding address. The tenants did not file an application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities.

Analysis

Pursuant to section 55(2)(b), a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Without any further dispute resolution process under Part 5 [Resolving Disputes], the director may grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent, pursuant to section 55(4).

In the matter before me, the tenants are deemed served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on May 9, 2022, three days after it was

posted to their door in accordance with sections 88 and 90 of the Act. The tenants did not make an application to dispute the notice within the 5 days as required by section 46(4) of the Act. The time to make that application expired on May 14, 2022.

Section 46(2) requires that a notice to end tenancy for non-payment of rent must comply with the form and content provisions of section 52 of the Act. I have reviewed the landlord's notice and find it complies with the form and content provision of section 52 of the Act. Pursuant to section 55, I grant the landlord an Order of Possession, effective May 19, 2022, the corrected earliest effective date for the notice. As this date has passed, the landlord is entitled to an order of possession effective 2 days after service upon the tenants.

I find the tenants were required to pay rent in the amount of \$1,000.00 per month and failed to do so for the months of February to June 2022. I find the landlord is not entitled to compensation for overholding tenants beyond June 30, 2022, as the landlords failed to mitigate their loss by failing to serve a 24-hour notice of inspection upon the tenants to determine whether the tenants had accepted the validity of the notice to end tenancy for unpaid rent served upon them and vacated the rental unit.

Pursuant to section 55(4), the landlord is entitled to a monetary order for the 5 months from February 1, 2022 to June 30, 2022 [$\$1,500.00 \times 5 = \$7,500.00$]. In accordance with the offsetting provisions of section 72, the landlord may retain the tenants' security deposit of \$500.00 to offset this amount [$\$7,500.00 - \$500.00 = \$7,000.00$].

The landlord is entitled to recover the filing fee of \$100.00 as the application was successful. The landlord is entitled to a monetary order in the sum of \$7,100.00.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I award the landlord a monetary order in the amount of \$7,100.00.

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: October 13, 2022

Residential Tenancy Branch