



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application, filed on September 11, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order of \$11,334.00 for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit of \$1,000.00, pursuant to section 38; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two tenants, "tenant VKN" and "tenant SK," did not attend this hearing, which lasted approximately 36 minutes. The landlord, the landlord's 4 agents, "landlord TA," "landlord STA," "landlord SM" and "landlord MM," and the landlord's witness attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began 1:30 p.m. and ended at 2:06 a.m. The landlord's witness attended this hearing from 1:30 p.m. to 1:48 p.m. only. Landlord MM joined this hearing at 1:49 p.m.

I monitored the teleconference line throughout this hearing. 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, the landlord's 4 agents, the landlord's witness, and I were the only people who called into this teleconference.

Landlord STA confirmed the names and spelling for himself, the landlord, landlord TA, and the two tenants. He provided his email address for me to send a copy of this decision to the landlord.

The landlord and landlord TA stated that they both co-own the rental unit and that their son, landlord STA, had permission to speak on their behalf at this hearing.

Landlord STA provided the rental unit address. He stated that landlord SM and landlord MM had permission to represent the landlord, landlord TA, and landlord STA at this hearing. Landlord STA identified himself as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure (“Rules”)* does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, all hearing participants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to all hearing participants. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Documents

Landlord SM stated that he served the two tenants with separate copies of the landlord’s application for dispute resolution hearing package and first evidence package including notices to end tenancy for unpaid rent and for cause and the tenancy agreement, on September 24, 2022, by way of registered mail to the rental unit where the tenants are still residing. The landlord provided two Canada Post receipts and landlord SM confirmed both tracking numbers verbally during this hearing. The landlord’s witness confirmed that he witnessed the above service. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord’s application and first evidence package on September 29, 2022, five days after their registered mailings.

Landlord SM stated that he served the two tenants with separate copies of the landlord’s second evidence package with duplicate copies of the notices to end tenancy for unpaid rent and “use and occupancy only” receipts, on December 23, 2022, by way of registered mail to the rental unit where the tenants are still residing. The landlord provided two Canada Post receipts and landlord SM confirmed both tracking numbers verbally during this hearing. The landlord’s witness confirmed that he witnessed the

above service. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's second evidence package on December 28, 2022, five days after their registered mailings.

Landlord SM stated that he served the two tenants with separate copies of the landlord's third evidence package with a statement of account, on December 31, 2022, by way of registered mail to the rental unit where the tenants are still residing. The landlord provided two Canada Post receipts and landlord SM confirmed both tracking numbers verbally during this hearing. The landlord's witness confirmed that he witnessed the above service. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's second evidence package on January 5, 2023, five days after their registered mailings.

Landlord MM testified that she served the two tenants with the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 4, 2022 ("10 Day Notice") on the same date, by way of posting to the tenants' rental unit door. The landlord's witness confirmed that he witnessed the above service. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 10 Day Notice on August 7, 2022, three days after its posting.

Landlord MM testified that she served the two tenants with the landlord's One Month Notice to End Tenancy for Cause, dated August 4, 2022 ("1 Month Notice") on the same date, by way of posting to the tenants' rental unit door. The landlord's witness confirmed that he witnessed the above service. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 1 Month Notice on August 7, 2022, three days after its posting.

Preliminary Issue – Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of tenant SK's first name. Landlord STA requested this amendment during this hearing. He provided the spelling of tenant SK's full name during this hearing. I find no prejudice to either party in making this amendment.

At the outset of this hearing, landlord STA and landlord SM both confirmed that the landlord is seeking a monetary claim of \$2,334.00 for unpaid rent plus the \$100.00 filing fee, and to retain the tenants' security deposit of \$1,000.00, towards the above claim. They both confirmed that the landlord is no longer seeking the remaining \$9,000.00 for unpaid rent, which was paid by the tenants, and was originally sought in the landlord's

application. Accordingly, I amended the landlord's application to reduce the landlord's monetary claim for unpaid rent from \$11,334.00 to \$2,334.00. I find no prejudice to the tenant in making this amendment because it is a reduction, rather than an increase, in the landlord's monetary claim.

Issues to be Decided

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

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

Is the landlord entitled to retain the tenants' security deposit?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, his agents, and witness during this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Landlord STA testified regarding the following facts. This tenancy began on February 1, 2022. Monthly rent in the current amount of \$2,000.00 is payable on the last day of each month, in advance. A security deposit of \$1,000.00 was paid by the tenants and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties. The tenants continue to reside in the rental unit.

A copy of the 10 Day Notice was provided for this hearing. Landlord SM confirmed that the 10 Day Notice, which has an effective move-out date of August 14, 2022, was issued to the tenants for failure to pay \$1,334.00, due on August 1, 2022. He said that the rent was due on July 31, 2022, but the notice mistakenly states August 1, 2022, as the due date, so the Arbitrator should amend the date at this hearing.

A copy of the 1 Month Notice was provided for this hearing. Landlord SM confirmed that the 1 Month Notice, which has an effective move-out date of September 30, 2022, was issued to the tenants for the following reason on page 2 of the notice: "*Tenant is repeatedly late paying rent.*" The details of cause on page 2 of the notice state that the tenant was late paying rent in April, May, and August 2022.

Landlord STA stated the following facts. The landlord seeks an immediate order of possession against the tenants. The landlord seeks a monetary order for unpaid rent of \$2,334.00, which includes August 2022 rent of \$1,334.00 and September 2022 rent of \$1,000.00. The landlord seeks to retain the tenants' security deposit of \$1,000.00 against the monetary order, and to recover the \$100.00 filing fee.

Landlord STA testified regarding the following facts. The tenants were late paying rent during this tenancy, in April, May, August, and September 2022. The landlord, landlord TA, and landlord STA provided "use and occupancy only" rent receipts to tenant VKN in person on the dates they were issued, when the rent was paid. The rent receipts are dated May 2, May 13, May 31, June 30, July 31, September 3, September 30, October 31, and November 30 of the year 2022.

Landlord STA stated the following facts. The tenants paid full April 2022 rent of \$2,000.00 late on April 28, 2022, partial May 2022 rent of \$1,334.00 late on May 2, 2022, partial May 2022 rent of \$666.00 late on May 13, 2022, partial August 2022 rent of \$666.00 on July 31, 2022, with a balance of \$1,334.00 still outstanding for rent in August 2022, and partial September 2022 rent of \$1,000.00 paid late on September 3, 2022, with a balance of \$1,000.00 still outstanding for rent in September 2022. The tenants paid full rent of \$2,000.00 to the landlord on time in June, July, October, November, December 2022, and January 2023.

Analysis

On a balance of probabilities and for the reasons stated below, I find that the landlord issued the 1 Month Notice for a valid reason. I accept the undisputed, affirmed testimony of the landlord, the landlord's agents, and the landlord's witness at this hearing. The tenants did not attend this hearing to provide affirmed testimony and did not provide any documentary evidence for this hearing.

Section 26 of the *Act* requires the tenants to pay rent on the date indicated in the tenancy agreement. In this case, landlord STA testified that rent is due on the last day of each month, in advance.

Residential Tenancy Policy Guideline 38 states that "three late payments are the minimum number sufficient to justify a notice..." The landlord provided undisputed, affirmed testimonial and documentary evidence that the tenants were late paying rent more than three times during this tenancy, including in April, May, August, and

September 2022. The landlord provided a statement of account and rent receipts to show the late rent payments.

Accordingly, I find that the tenants were repeatedly late paying rent. I find that the landlord's 1 Month Notice was issued for a valid reason.

As I have found the 1 Month Notice to be valid, I do not need to examine the landlord's 10 Day Notice. The landlord's application for an order of possession for unpaid rent, based on the landlord's 10 Day Notice, dated August 4, 2022, is dismissed with leave to reapply.

The tenants have not made an application pursuant to section 47(4) of the *Act* within 10 days of receiving the 1 Month Notice. In accordance with section 47(5) of the *Act*, the failure of the tenants to file an application within 10 days led to the end of this tenancy on September 30, 2022, the effective date on the 1 Month Notice.

In this case, this required the tenants and any other occupants on the premises to vacate the premises by September 30, 2022. As this has not occurred and the effective date has long passed, I find that the landlord is entitled to a two (2) Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 1 Month Notice complies with section 52 of the *Act*.

I find that the landlord did not waive his right to enforce the 1 Month Notice by accepting rent from the tenants after the effective date of the notice. The landlord did not withdraw the notice, he continued to pursue an order of possession against the tenants at this hearing, he did not cancel this hearing, and he did not withdraw his application filed for this hearing.

I accept landlord STA's undisputed, affirmed testimony and documentary evidence that rent receipts were issued to the tenants, indicating "payment accepted for use and occupancy only not reinstating the tenancy," from May to November 2022.

Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,334.00 for August 2022 and \$1,000.00 for September 2022, to the landlord. I find that the landlord is entitled to \$2,334.00 total for unpaid rent from the tenants.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,000.00. Over the period of this tenancy, interest is payable on the deposit. No interest is payable for the year 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1 to 27, 2023, since the date of this hearing and decision is January 27, 2023. This results in \$1.44 interest on \$1,000.00 for 7.40% of the year based on the RTB online deposit interest calculator.

The landlord applied to retain the tenants' security deposit in this application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$1,000.00 plus interest of \$1.44, totalling \$1,001.44, in partial satisfaction of the monetary claim. I issue a monetary order of \$1,432.56 for the balance, to the landlord.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) or anyone 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 order the landlord to retain the tenants' entire security deposit of \$1,000.00 plus interest of \$1.44, totalling \$1,001.44, in partial satisfaction of the monetary claim.

I issue a monetary order in the landlord's favour in the amount of \$1,432.56 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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.

The landlord's application for an order of possession for unpaid rent, based on the landlord's 10 Day Notice, dated August 4, 2022, is dismissed with leave to reapply.

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: January 27, 2023

Residential Tenancy Branch