



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or 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 in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The two tenants, male and female, did not attend this hearing, which lasted approximately 25 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the two tenants were each served separately with a copy of the landlord's application for dispute resolution hearing package on September 20, 2016, both by way of registered mail. The landlord provided two Canada Post tracking numbers verbally during the hearing. The landlord provided emails between the parties, confirming that the tenants were aware of this hearing and the landlord's application to obtain an order of possession and a monetary award for unpaid rent. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application on September 25, 2016, five days after their registered mailings.

The landlord testified that the two tenants were each served separately with a copy of the landlord's written evidence package on October 17, 2016, both by way of registered

mail. The landlord provided two Canada Post tracking numbers verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's written evidence packages on October 22, 2016, five days after their registered mailings.

The landlord testified that the female tenant was personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 2, 2016 ("first 10 Day Notice") on the same date by the landlord's stepfather, with the landlord's mother witnessing the service. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were served with the landlord's first 10 Day Notice on September 2, 2016.

The landlord testified that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 3, 2016 ("second 10 Day Notice") on the same date by way of posting to the rental unit door. The landlord provided a signed, witnessed proof of service which indicates that the landlord's mother posted the notice and the landlord's stepfather witnessed the service. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's second 10 Day Notice on October 6, 2016, 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 increase the monetary claim to include October and November 2016 rent of \$1,350.00 for each month and for the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award. The tenants are aware that rent is due on the first day of each month. The tenants continue to reside in the rental unit, despite the fact that two 10 Day Notices required them to vacate for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claims for increased rent, despite the fact that they did not attend this hearing.

Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on August 1, 2016 and is for a fixed term of one year. Monthly rent in the amount of \$1,350.00 is payable on the first day of each month. A security deposit of \$675.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants continue to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent. The landlord issued the first 10 Day Notice indicating that rent of \$1,350.00 was due on September 1, 2016. The landlord issued the second 10 day Notice indicating that rent of \$1,350.00 was due on October 1, 2016. The landlord maintained that the tenants did not pay any rent from September to November 2016, inclusive, totalling \$4,050.00.

The landlord seeks a monetary order of \$4,050.00 for unpaid rent as well as recovery of the \$100.00 filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on September 1, 2016, within five days of receiving the first 10 Day Notice. The tenants have not made an application pursuant to section 46(4) of the *Act* within five days of receiving the second 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on September 12, 2016, the corrected effective date on the first 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by September 12, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's first 10 Day Notice complies with section 52 of the *Act*.

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. However, section 7(2) of the *Act* places a

responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent of \$1,350.00 for each month from September to November 2016, inclusive. The landlord provided two 10 Day Notices indicating the above amounts for September and October 2016. I find that the landlord is entitled to \$4,050.00 in unpaid rent from the tenants.

The landlord continues to hold the tenants' security deposit of \$675.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit of \$675.00 in partial satisfaction of the monetary award.

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

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenants**. 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 issue a monetary order in the landlord's favour in the amount of \$3,475.00 against the tenants. 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.

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: November 10, 2016

Residential Tenancy Branch