



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL; CNR-MT, OLC, MNDCT, FFT

Introduction

This hearing dealt with the landlords' 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, pursuant to section 67; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 3, 2021 ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlords' 10 Day Notice, pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- a monetary order for \$1,000.00 for compensation under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for her application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The two landlords (male and female) 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 at 9:30 a.m. and ended at 9:46 a.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 landlords and I were the only people who called into this teleconference.

At the outset of this hearing, I informed the two landlords that they were not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure*. Both landlords affirmed that they would not record this hearing.

I explained the hearing process to both landlords. They confirmed that they were ready to proceed with this hearing. They did not make any adjournment or accommodation requests. Both landlords confirmed that they own the rental unit.

The female landlord testified that the tenant was served with the landlords’ application for dispute resolution, notice of hearing and first evidence package on July 29, 2021, by way of registered mail to the rental unit where the tenant is still residing. She provided a Canada Post tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords’ application, notice of hearing and first evidence package on August 3, 2021, five days after its registered mailing.

The female landlord stated that the tenant was served with the landlords’ amendment and updated monetary order worksheet on September 20, 2021, by way of registered mail to the rental unit where the tenant is still residing. She provided a Canada Post tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s amendment and updated monetary order worksheet on September 25, 2021, five days after its registered mailing.

The above deemed service date of September 25, 2021 is less than 14 days prior to this hearing date on October 8, 2021, not including the service or hearing dates. This is late, as per Rule 3.14 of the RTB *Rules of Procedure*. I notified the landlords that I did not receive a copy of their amendment and I could not consider their amendment or updated monetary order worksheet for bylaw fines, at this hearing or in my decision. I informed them that they could reapply for this relief at the RTB in the future, if they wanted to do so. They confirmed their understanding of same.

The female landlord confirmed that both landlords served the tenant with the landlords’ 10 Day Notice on July 6, 2021, by way of posting to the rental unit door, where the tenant is still residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s 10 Day Notice on July 9, 2021, three days after its posting. In her application, the tenant stated that she received the 10 Day Notice on July 8, 2021, by way of posting to her door.

Preliminary Issue - Amendment to Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase the landlord's monetary claim to include August, September and October 2021 rent of \$1,999.00 for each month, totalling \$5,997.00. When the landlords filed their application on July 15, 2021, the above rent was not yet due.

The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlords' claims for increased rent, despite the fact that she did not attend this hearing.

Preliminary Issue – Dismissal of Tenant's Application

The landlords stated that they did not receive a copy of the tenant's application for dispute resolution hearing package.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlords are entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to recover the filing fee for their application?

Background and Evidence

The female landlord stated the following facts. This tenancy began on June 1, 2021. Monthly rent in the amount of \$1,999.00 is payable on the first day of each month. A security deposit of \$999.50 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The female landlord testified regarding the following facts. The landlords seek an order of possession for unpaid rent based on the 10 Day Notice. The 10 Day Notice was issued for unpaid rent of \$1,999.00 due on July 1, 2021. The tenant failed to pay rent of \$1,999.00 per month from July to October 2021, inclusive, totalling \$7,996.00. The landlords seek a monetary order of \$7,996.00 for unpaid rent and to recover the \$100.00 filing fee paid for their application.

Analysis

The landlords provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on July 1, 2021, within five days of receiving the 10 Day Notice. The tenant filed an application to dispute the notice, pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing to provide her evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on July 19, 2021, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by July 19, 2021. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply.

The landlords provided undisputed evidence that the tenant failed to pay rent of \$1,999.00 per month, totalling \$7,996.00, for four months from July to October 2021. Therefore, I find that the landlords are entitled to a monetary order of \$7,996.00 in unpaid rent from the tenant.

Although this hearing occurred on October 8, 2021, I find that the landlords are entitled to one full month's rent for October 2021 of \$1,999.00. I accept the female landlord's submission that the tenant is still residing in the rental unit. Further, rent is due on the first day of each month.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

The landlords continue to hold the tenant's security deposit of \$999.50. Over the period of this tenancy, no interest is payable on the deposit. Although the landlords did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security deposit of \$999.50 in partial satisfaction of the monetary award. The landlords are provided with a monetary order for the balance due of \$7,096.50.

Conclusion

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. The tenant must be served with this Order as soon as possible. Should the tenant 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 landlords to retain the tenant's entire security deposit of \$999.50 in partial satisfaction of the monetary award.

I issue a monetary order in the landlords' favour in the amount of \$7,096.50 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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 tenant's entire application is dismissed without 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: October 08, 2021

Residential Tenancy Branch