



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **OPR, MNRL, FFL**

Introduction

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for an order of possession pursuant to section 55 of the Act
- for a monetary order for unpaid rent pursuant to section 67 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord’s agents AP and CH appeared. Tenant LH appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord stated that the 10 Day Notice was personally served on the tenant DS at the rental unit on November 11, 2022. The landlord provided the RTB34 proof of service form in evidence, Pursuant to section 88 of the Act the tenants are found to have been served with this notice in accordance with the Act.

The tenants testified that they received the landlord’s dispute notice and materials and based on their evidence I find they were served in accordance with sections 88 and 89 of the Act.

The tenants testified that they provided documentary evidence in support of their application. The landlord stated that they did not receive evidence from the tenant. The

tenants did not produce any documentary evidence. Therefore, I cannot consider any of the tenants' documents.

Preliminary Hearing

All the parties' names were incorrect on the application. Pursuant to section 64(3)(c) of the Act the application is amended to reflect the correct parties and the correct spelling of names.

Issue(s) to be Decided

1. Is the One Month Notice valid and enforceable against the tenant? If so, are the landlords entitled to an order of possession?
2. Are the landlords entitled to a monetary order for compensation for unpaid rent?
3. Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on August 15, 2022 and was on a month to month basis. Rent was \$1,100.00 per month due on the first of the month. Rent increased to \$1,116.00 per month in February 2021. The landlords hold a security deposit of \$550.00 in trust for the tenants.

The landlord testified that the tenants have been in arrears on rent since January 2021. In September 2022 they paid \$1,000.00. The tenants have not paid rent since September 2022. The current rent outstanding is \$18,248.000.

The tenants admitted to not paying rent but disputed the amount of rent outstanding. The tenants stated that they always paid rent in cash and never received a receipt. The tenants pointed to a previous 10 Day Notice in evidence dated September 7, 2021 showing that as of September 1, 2021 they only owed \$4,400.00 in rent, which is different than the amount claimed by the landlord.

The landlord stated the tenants paid rent by electronic transfer. They also stated that the rental property changed hands in June 2022 when the new agents for the landlord took over the property.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

The tenants did not dispute that they failed to pay rent when due under the tenancy agreement. The tenants did not file a dispute application in respect of the 10 Day Notice. Pursuant to section 46(5) of the Act the tenants are conclusively presumed to accept that the tenancy has ended on the effective day of the notice. The landlord is entitled to an order of possession for the rental unit.

Based on section 55(1.1) of the Act I must grant a monetary order for unpaid rent if I find that the 10 Day Notice complies with the form and content requirements in section 52 of the Act and if I uphold the landlord's notice. I find that the 10 Day Notice complies with section 52 of the Act and that the tenant has failed to pay rent. Therefore, the landlord's 10 Day Notice is valid, and I must grant an order for unpaid rent.

The tenants have disputed the amount of rent owing, and also testified that they paid rent in cash. They stated that they were not given receipts by the landlord. The landlord stated that rent was paid by the tenants through electronic transfer. I prefer the evidence of the landlord on this point. While the tenant LH stated that he paid rent in cash, he also stated that he provided the rent money to the tenant DS by electronic transfer and she was responsible for paying the rent. Therefore I find that the tenants' evidence on rent payments is unreliable and I prefer the evidence of the landlord on this point.

The landlord testified that the current amount of rent owing is \$18,248.00. The landlord provided a rent ledger in evidence in support of this amount. The current landlord provided a previous 10 Day Notice in evidence from the previous landlord listing the

amount of unpaid rent as of September 1, 2021 was \$4,400.00. This contradicts the landlord's rent ledger which shows that the tenants owed \$6,500.00 in unpaid rent as of September 1, 2021. I was not provided with any evidence regarding the outcome of the previous 10 Day Notice. I was not provided with any evidence of the electronic transfer payments made by the tenants.

The tenants admitted being in arrears on rent. However I find that the landlord has not satisfied their onus to establish the exact amount of rent owing to date as the landlord's evidence is contradictory on this point. As section 55(1.1) requires me to issue an order for unpaid rent, I find that the landlord has established based on the evidence before me that they are entitled to compensation for one months rent in the amount of \$1,116.00. The landlord has leave to reapply for any further unpaid rent owing.

As the landlord was partially successful in their application, they are entitled to recover the filing fee of \$100.00.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order for \$1,216.00 in recovery of unpaid rent and the filing fee. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: April 12, 2023

Residential Tenancy Branch