



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 the landlord's application pursuant to the *Residential Tenancy Act* ("the 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 this application from the tenant pursuant to section 72.

The tenant/respondent did not attend this hearing, although I left the teleconference hearing connection open 14 minutes in order to enable the tenant/respondent to call into this teleconference hearing scheduled for 9:30 a.m. The landlord/applicant attended the hearing and was given an opportunity to be heard, to present affirmed testimony and to make submissions. 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 and I were the only ones who had called into this teleconference.

The landlord provided affirmed, undisputed evidence that a 10-Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was personally served to the tenant on February 26, 2018. The landlord testified that she also personally served the tenant with the Application for Dispute Resolution hearing package ("ADR") on March 10, 2018. Based on the undisputed testimony of the details of service by the landlord, I find that the tenant was duly served with the Notice to End Tenancy and the ADR package on February 26, 2018 and March 10, 2018 respectively in accordance with section 88, 89, and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent?

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

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

Background and Evidence

This tenancy began eight years ago. The landlord testified that she does not believe the parties signed a written agreement. The landlord testified that the current rental amount

of \$600.00 is due on the third week of the month. The landlord testified that she continues to hold the \$250.00 security deposit paid by the tenant at the outset of the tenancy. The landlord sought to end the tenancy for unpaid rent and to recover \$3600.00 in unpaid rent as of the date of this hearing.

The landlord testified that the tenant has been struggling to keep up with his rent payments for over one year. She testified that she changed the rental due date to accommodate him (from first of the month to third week of the month). She testified that she entered into a payment plan with the tenant so that he could pay \$200.00 at a time. She testified that, while the tenant made three \$200.00 payments in December 2017 and in January 2018, the tenant continued to fall further and further behind with a growing amount of rental arrears. She submitted copies of the rent receipts she issued to the tenant in the months of December 2017 and January 2018 – the three receipts all indicated “November rent”.

On February 26, 2018, the landlord issued a Notice to End Tenancy for unpaid rent for \$1800.00. At that time, the tenant owed rent for the months of December 2017, January 2018 and February 2018. The landlord testified that the tenant did not pay rent of \$600.00 due on February 1, 2018. She testified that the tenant did not pay rent 5 days after the issuance of her 10-Day Notice. She testified that the last \$200.00 payment she received from the tenant was on January 15, 2018.

The landlord sought an Order of Possession based on Unpaid Rent. The tenant has not applied to cancel the Notice to End Tenancy and has not paid his outstanding rent. The landlord also applied for a monetary award of \$4200.00 for outstanding rent for the months of December 2017, January 2018, February 2018, March 2018, April 2018 or May 2018. As well as \$3600.00 in rent outstanding, the landlord requested \$600.00 for June 2018 as she testified she would be unable to re-rent the unit for the month of June.

The landlord submitted that because the tenant has lived in the rental unit for 8 years, she would have to paint and make some other repairs to the rental unit simply from wear and tear. She submitted that this hearing took place on the 23rd of the month, she will unlikely be able to have the tenant vacate the rental unit for the first of the month. Therefore, she will not be able to begin any repairs and painting until after June 1st. She submitted that because most people rent from the first of the month, it would be difficult for her to re-rent in the month of June 2018.

Analysis

The landlord applied for an Order of Possession based on the tenant's failure to pay rent. I accept the landlord's undisputed testimony that the tenant has not paid any rent to her since January 2018. I accept her testimony and documentary evidence to show that, at that time, the tenant paid outstanding rent from November 2017.

The tenant failed to pay the outstanding rent (including February 2018 rent) within five days of receiving the 10-Day Notice to End Tenancy. I find that the tenant was duly served with the landlord's 10-Day Notice: the tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10-Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by March 9, 2018. As that has not occurred, **I find that the landlord is entitled to a 2 day Order of Possession.**

I find that the landlord is entitled to receive an order for unpaid rent for the months of December 2017, January 2018, February 2018, March 2018, April 2018 and May 2018 (\$600.00 x 6 months = \$3600.00). I find that the tenant had been cautioned (with a previous Notice to End Tenancy and the arrangement of a payment plan as well as other communication from the landlord) that he must pay rent in accordance with the *Act* and that he has not done so.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." I find that the landlord has proven the tenant has not paid rent and that he was aware of this hearing to attend and dispute the landlord's application but he did not. I issue a monetary order that includes \$3600.00 in unpaid rent.

The landlord testified that she is unlikely to be in a position to re-rent the premises for June 2018, as considerable cleaning and refurbishing of the premises will be required following this long-term (8 year) tenancy. Therefore, the landlord requested the tenant pay June 2018 rent as well. I accept this uncontested evidence offered by the landlord that she would require time to refurbish (paint and repairs from wear and tear) the rental unit. I issue a monetary order that includes the landlord's application for \$600.00 for June rent.

The landlord testified that she continues to hold a security deposit of \$250.00 plus any interest from 2010 to the date of this decision for this tenancy. Pursuant to section 72, I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. There is no interest payable for this period.

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

Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for 6 months x \$600.00 per month December 2017 to May 2018	\$3600.00
Rental Loss – June 2018	600.00
Less Security Deposit (no interest payable)	-250.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$4050.00

The landlord is provided with this monetary Order in the above terms and 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.

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: May 23, 2018

Residential Tenancy Branch