



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 ones who had called into this teleconference.

The landlords testified that the tenant was served the notice of dispute resolution package by registered mail on June 21, 2019. The landlords provided the Canada Post Tracking Number to confirm this registered mailing. I find that the tenant was deemed served with this package on June 26, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Unpaid Rent

The landlords' original application claimed unpaid rent in the amount of \$5,962.50. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$6,562.50.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlords are seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlords filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlords' application to include a monetary claim for all outstanding rent in the amount of \$6,562.50.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit was not paid by the tenant to the landlords. This is a verbal tenancy agreement.

The landlord testified that on June 11, 2019 the tenant was served with a 10 Day Notice to End Tenancy for Cause with an effective date of May 21, 2019 (the “10 Day Notice”) via registered mail. The landlord entered into evidence the Canada Post receipt and tracking number to prove this registered mailing. The 10 Day Notice states that the tenant failed to pay rent in the amount of \$5,362.50 that was due on May 1, 2019.

The landlords testified that the tenant sporadically paid rent and occasionally provided the landlords with labour in lieu of rent. The landlords entered into evidence a balance sheet pertaining to the tenant’s rent and labour payments. The balance sheet states that between December of 2017 and June of 2019, the tenant accrued \$5,962.50 in unpaid rent. The landlords testified that the tenant did not pay rent for July of 2019 and has not paid any rent since the 10 Day Notice was served.

The tenant has not filed an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by sending a copy by registered mail. I find that the tenant was deemed served with the 10 Day Notice on June 16, 2019, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

Section 53(2) of the *Act* states that if the effective date stated in a notice to end tenancy is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46(1) of the *Act* is May 26, 2019. I find that the corrected effective date of the 10 Day Notice is May 26, 2019.

Based on the undisputed testimony of the landlords, I find that the tenant failed to pay the outstanding rent within five days of receiving the 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 tenants to vacate the premises by May 26, 2019, as that has not occurred, I find that the landlords are entitled to a 2-day Order of Possession. The landlords will be given a formal Order of Possession which must be served on 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.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$600.00 on the first day of each month. Based on the testimony of the landlords and the balance sheet entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlords \$6,562.50 in unpaid rent from December 2017 to July 2019.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlords effective **two days after service on the tenant**. Should the tenant 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 to the landlords in the amount of \$6,662.50.

The landlords are provided with this 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: August 01, 2019

Residential Tenancy Branch