



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:41 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representative NH attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

I accept the landlord's representative testimony that the tenant was served with the notice of hearing and evidence (the Materials) by registered mail on November 08, 2019, in accordance with section 89 (c) of the *Act* (the tracking number is reproduced on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenant is deemed to have received the Materials on November 13, 2019

Preliminary Issue – Amendments

Section 64(3)(c) of the Act states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (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.

The landlord's original application claimed unpaid rent in the amount of \$3,220.00. Since filing for dispute resolution, the landlord's representative testified that the amount of rent owed by the tenant has increased to \$4,320.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord 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 landlord's application to include a monetary claim for all outstanding rent in the amount of \$4,320.00.

During the hearing the landlord's representative clarified that the unit address is 102, not 103. Pursuant to section 64 of the Act, I amend the landlord's application for dispute resolution to change the tenancy address to unit 102 of the address provided.

Issues to be Decided

- Is the landlord entitled to obtain an order of possession, pursuant to section 46 and 55 of the Act?
- Is the landlord entitled to a monetary order for unpaid rent pursuant to sections 26 and 67 of the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act pursuant to section 72 of the Act?

Background and Evidence

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

The landlord's representative testified that:

- The tenant is still residing at the rental property;
- There is no written tenancy agreement;
- The owner of the rental property is Waterfront Development LTD. This company was managing the rental property until July 2019, when the current landlord started managing the rental property;
- At the outset of the tenancy a security deposit of \$500.00 was collected. There is no pet damage deposit. The landlord still holds the security deposit;
- Rent is currently \$1,000.00 per month;
- The tenant told the landlord's representative he will pay all rent arrears until the end of 2019;
- Since August 01, 2019, the only payment from the tenant was \$680.00 on October 08, 2019;

The landlord provided page 01 of the 10 day notice to end tenancy (the Notice), a witnessed proof of service pertaining to the Notice, a monetary worksheet and a ledger.

Analysis

Section 88 (a) of the Act states:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

Based on the testimony of the landlord's representative, I find that the landlord served the Notice on the tenant on October 18, 2019. I find that this meets the service requirements set out at Section 88 (g) of the Act. Pursuant to section 90 (c) of the Act, the Notice is deemed served on October 21, 2019.

Sections 46(4) and (5) of the Act state:

Landlord's notice: non-payment of rent

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[...]

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b)must vacate the rental unit to which the notice relates by that date.

Section 46(5) of the Act is mandatory, and I do not have discretion as to its application. Based on the landlord's representative testimony I find the tenant did not file an application to dispute the Notice within 10 days of receiving it or pay the rent stated as outstanding on the Notice, within five days of receiving it. Therefore, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (November 04, 2019) and must move out of the rental property. As this has not occurred, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 55 of the Act.

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 \$1,000.00.

Based on the testimony of the landlord's representative I find that the tenant did not pay rent in accordance with section 26(1) of the Act and owes the landlord \$4,320.00 for unpaid rent from August to December 2019.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord and the

monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. I order the landlord to retain the tenants' security deposit of \$500.00 in partial satisfaction of the unpaid rent.

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, pursuant to section 72 of the Act.

In summary:

Landlord's monetary claim for unpaid rent	\$4,320.00
Minus tenant's security deposit	\$500.00
Allowed monetary claim for unpaid rent	\$3,820.00
Landlord's filing fee	\$100.00
Total monetary award	\$3,920.00

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this order** 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.

Pursuant to sections 67 and 72 of the *Act*, I authorize the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of unpaid rent and grant the landlord a monetary order in the amount of \$3,920.00 for unpaid rent and for the recovery of the filling fee for this application.

The landlord is provided with this order in the above terms and the tenant must be served with **this order** as soon as possible. Should the tenants 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: December 31, 2019

Residential Tenancy Branch