



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDL-S MNRL-S OPU

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 or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

At the outset of the hearing, another party had joined the hearing, who was not a named party to this application. The party provided the information for his application, and it was confirmed that his hearing was scheduled for a different date and time. The party exited the hearing at 11:03 a.m.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:21 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on December 12, 2019. The landlord provided the tracking information in their evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the

Application and evidence on December 17, 2019, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated November 10, 2019, by posting the notice on his door. The landlord provided a photo of the 10 Day Notice posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, the 10 Day Notice I find the 10 Day Notice deemed served on November 13, 2019, three days after its posting.

Although the landlord applied for a Monetary Order of \$2,100.00 in their initial claim, the tenant has failed to pay rent for the months of November 2019 through to February 2020. Since the filing of this application, another \$3,600.00 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application from \$2,100.00 to \$5,000.00 (plus \$100.00 filing fee) to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed?

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

Background and Evidence

This month-to-month tenancy began on October 24, 2019, with currently monthly rent set at \$1,200.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$600.00, which the landlord still holds.

The landlord served the tenant with a 10 Day Notice for unpaid rent on November 10, 2019. The landlord testified that since the 10 Day Notice was served, the tenant has failed to pay the outstanding rent, or any rent for the months of November 2019 through to February 2020.

The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent and recovery of the filing fee.

The landlord is also seeking a monetary order in the amount of \$200.00 for cleaning.

The landlord read a statement in the hearing explaining the hardship the tenant has caused him. The landlord testified that he had discovered that the tenant had targeted him, and other landlords in the past, and as a result the landlord has experienced a significant monetary loss due to the tenant's failure to comply with the *Act* and tenancy agreement.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on November 25, 2019, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by November 25, 2019. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) 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.

The landlord provided undisputed evidence that the tenant failed to pay any monthly rent for the months of November 2019 through to February 2020. Therefore, I find that the landlord is entitled to \$4,800.00 in outstanding rent for the months of November 2019 through to February 2020.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear. The landlord is applying for \$200.00 for cleaning. As the tenant has not yet moved out, I find this portion of the landlord's application to be premature. Accordingly, I dismiss this portion of the landlord's application with leave to reapply.

The landlord continues to hold the tenant's security deposit of \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

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

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. 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 dismiss the landlord's application for cleaning costs with leave to reapply.

I issue a \$4,300.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

| Item | Amount |
|---|-------------------|
| Unpaid Rent for November 2019 | \$1,200.00 |
| Unpaid Rent for December 2019 | 1,200.00 |
| Unpaid Rent for January 2020 | 1,200.00 |
| Unpaid Rent for February 2020 | 1,200.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Security Deposit | -600.00 |
| Total Monetary Order | \$4,300.00 |

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: February 3, 2020