



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Mountain Family Ventures Ltd.
and [tenant name suppressed to protect privacy]

DECISION

CNR OPR, MNR, MNSD, FF

Dispute Codes

Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an Order of Possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "Notice") issued on January 19, 2020; and
2. To recover the cost of filing the application.

Only the landlord's agent appeared.

Tenant's application

This matter was set for hearing by telephone conference call at 9:30A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Respondent. Therefore, as the tenant did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, **I dismiss the tenant's application without leave to reapply.**

Landlord's application

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent submits that the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on January 31, 2020, a Canada post tracking number was provided as evidence of service. The landlord's agent stated that the package was returned unclaimed.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that tenant has been duly served in accordance with the Act.

Further, this hearing was scheduled based on the tenant's application. I find the tenant is clearly aware of the issues to be determined at today's hearing.

Issue to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

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

Background and Evidence

The tenant submits through their application that they received the Notice on January 19, 2020. The tenant acknowledged in their application that they have fallen behind paying rent.

The landlord's agent testified that rent in the amount of \$1,600.00 is due on the 15th of each month. The agent stated that the tenant paid a security deposit of \$800.00.

The landlord's agent testified that the tenant only paid one month of rent since the tenancy commenced and that was for December 2019. The landlord's agent stated that the tenant has not paid any rent for January, February, and March 2020 and currently owes the amount of \$4,800.00.

The landlord's agent testified that the tenant is now telling other tenants in the complex not to pay their rent, causing financial hardship.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

How to end a tenancy is defined in Part 4 of the Act.

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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenant had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

While I accept the tenant's submission that they fell behind in rent in December 2019; that is not for me to considered and is not grounds to dispute the Notice. I find the Notice is valid and remains in full force and effect. As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In this case, I find the tenant has not paid rent for January, February, and March 2020. I find the tenant has breached section 26 of the Act. Therefore, I find the landlord is entitled to recover unpaid rent for the said months in the amount of **\$4,800.00**.

I find that the landlord has established a total monetary claim of **\$4,900.00** comprised of the above amount and the cost to recover the filing fee from the tenant.

I authorize the landlord to retain the security deposit of \$800.00 in partial satisfaction of the claim. The landlord is granted a formal monetary order pursuant to section 67 in the balance due of **\$4,100.00**. **The tenant is cautioned that costs of such enforcement are recoverable from the tenant.**

I also find it appropriate to make the following order against the tenant.

I Order the tenant to cease interfering with the landlord's lawful rights to collect rent. The tenant has been informing other tenant's in the building not to pay rent, which is contrary to the Act. A tenant must pay rent when rent is due. Should other tenants be following the tenant's action of not paying rent, they are putting their own tenancies at risk.

Should the tenant fail to comply with my cease order. The tenant is cautioned that they could be subject to an administrative penalty of up to \$5,000.00 for each time they breach my cease order.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession and may keep a portion of the security deposit in full satisfaction of the claim.

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: March 30, 2020

Residential Tenancy Branch

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.gov.bc.ca/landlordtenant
