



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, LAT, LRE, OPR, MNRL, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On January 20, 2020, the Tenant applied for a Dispute Resolution proceeding seeking a Repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “*Act*”), seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*.

On January 20, 2020, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “*Notice*”) pursuant to Section 46 of the *Act*, seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*. On January 20, 2020, this Application was set down for a participatory hearing to be heard as a cross application with the Tenant’s Application on March 20, 2020 at 11:00 AM.

The Tenant did not attend the 17-minute hearing; however, the Landlord did attend the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that he served the Tenant with the Notice of Hearing package by hand to the Tenant on January 20, 2020, but he did not have proof of this. However, based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenant was served the Notice of Hearing package in accordance with Sections 89 and 90 of the *Act*.

The Landlord advised that he was never served the Tenant’s Notice of Hearing package. As well, he stated that he did not submit any evidence for consideration on this file, except for a copy of the Notice.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I have dismissed her Application without leave to reapply.

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?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that he was not sure when the tenancy started but it was over a year ago. He advised that he did not have a written tenancy agreement with this Tenant. He stated that the rent was owed in the amount of \$600.00 per month and it was due on the first day of each month. A security deposit of \$300.00 was also paid.

He advised that he served both pages of the Notice to the Tenant on January 3, 2020 by hand. He stated that \$600.00 was outstanding on January 1, 2020 as the Tenant did not pay this month's rent. In addition, he also stated that the Tenant did not pay rent in full for February or March 2020 either. As such, he is seeking a Monetary Order for unpaid rent in the amount of **\$1,800.00**. The effective end date of the tenancy on the Notice was noted as January 13, 2020.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52. Therefore, I find that it is a valid Notice.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. The consistent evidence before me is that the Tenant was served the Notice in person on January 3, 2020. According to Section 46(4) of the *Act*, the Tenant has 5 days, after being served the Notice, to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on January 8, 2020, the Tenant must have paid the rent in full or made her Application to dispute the Notice on this date at the latest. The undisputed evidence is that the Tenant did not pay the rent in full, did not have a valid reason under the *Act* for withholding the rent, and did not dispute the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award for January, February, and March 2020 rent arrears. I grant the Landlord a monetary award in the amount of **\$1,800.00**, which is comprised of rent owed for these months.

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

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant 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.

The Landlord is provided with a Monetary Order in the amount of **\$1,900.00** 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: March 20, 2020

Residential Tenancy Branch