



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Willow Point Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR (for Tenant)
OPR-DR, OPRM-DR, FFL (for Landlord)

Introduction

In these cross-applications, the landlord sought a monetary order and an order of possession for unpaid rent, under sections 55 and 67 of the *Residential Tenancy Act* (the “Act”). They also sought recovery of the filing fee under section 72 of the Act. The tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”).

The landlord applied for dispute resolution on February 12, 2020, the tenant applied on February 11, 2020, and a dispute resolution hearing was held on April 2, 2020 at 9:30 AM. The landlord’s agent (hereafter the “landlord”) and a property manager attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant did not attend.

I have reviewed evidence submitted that met the *Rules of Procedure* and to which I was referred but have only considered evidence relevant to the issues of these applications.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy started on September 1, 2019, and it is a fixed-term tenancy ending on May 30, 2020. Monthly rent is \$2,900.00 and the tenant paid a security deposit of \$1,450.00. Rent includes hydro and internet. There is a written tenancy agreement in place.

On February 6, 2020, the landlord served the Notice in-person on the tenant. The Notice indicated that rent in the amount of \$5,800.00 was due on February 1, 2020. A copy of the Notice was submitted into evidence.

In support of the landlord's case, they submitted a Monetary Order Worksheet, which indicated that no rent had been paid for January, February and March 2020. The landlord testified that the tenant also did not paid rent for April 2020. Rent arrears now total \$11,600.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Order of Possession

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due, and did not pay rent for January to April 2020, inclusive. Further, there is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent.

Section 55(1) of the Act states that

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The tenant failed to attend the hearing to present his case, and, taking into consideration the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenant did not pay rent. I further find that the Notice complies with section 52 of the Act.

Pursuant to section 55(1) of the Act, I grant the landlord an order of possession, which is issued in conjunction with this Decision. I further order, and find, that the tenancy ended on February 16, 2020, as indicated on the Notice.

It is recommended that the landlord refer to *Residential Tenancy (COVID-19) Order*, MO 89/2020, for information regarding the enforcement of orders of possession.

Claim for Compensation

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim that the tenant now owes \$11,600.00 in rent arrears.

Claim for Recovery of the Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the filing fee in the amount of \$100.00.

Summary of Monetary Award and Monetary Order

A total monetary award of \$11,700.00 and a monetary order of \$10,250.00 for the landlord is calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$11,600.00
Filing fee	\$100.00
<i>LESS</i> security deposit	(\$1,450.00)
Total:	\$10,250.00

Pursuant to section 38(4)(b) of the Act, I order that the landlord may retain the tenant's full security deposit of \$1,450.00 in partial satisfaction of the award. A monetary order in the amount of \$10,250.00 is issued in conjunction with this Decision.

Conclusion

The tenant's application is dismissed without leave to reapply

I grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service.

I grant the landlord a monetary order in the amount of \$10,250.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s 9.1 of the Act.

Dated: April 2, 2020

Residential Tenancy Branch