



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Peter Wall Mansion & Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, LRE, OPRM-DR, OPR-DR, FFL**

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46; and
- An order suspending the landlord’s right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the “landlord”).

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find each party was duly served with all materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord made a preliminary application to amend their monetary claim. The landlord testified that since the application was filed additional rent has come due and owing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the

Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$1,770.00 to \$3,540.00 as the additional amount of rent arrears could be reasonably anticipated.

Issues to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Should the landlord's right to enter the rental unit be limited?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The parties agree on the following facts. The monthly rent for this tenancy is \$1,770.00 payable on the first of each month. A security deposit of \$890.00 was paid at the start of the tenancy and is still held by the landlord. The tenant failed to pay rent for March 2020 and the landlord issued a 10 Day Notice dated March 2, 2020 for the arrear amount of \$1,770.00 by posting on the rental unit door. The tenant filed their application to dispute the notice on March 9, 2020.

The parties agree that as of the date of the hearing, April 21, 2020 there is a rental arrear of \$3,540.00 as the tenant has failed to pay rent for March and April 2020. The tenant explained that their employment income has decreased due to the ongoing Covid-19 pandemic.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case, the parties agree that there was a rent arrear of \$1,770.00 at the time the 10 Day Notice was issued. The parties say that the total arrears as of the date of the hearing is \$3,540.00.

I accept the evidence of the parties that there is a rental arrear and that the tenant failed to pay the full rent due within the 5 days of service. Accordingly, I find that the tenancy ended on the corrected effective date of the 10 Day Notice, March 17, 2020.

The 10 Day Notice is dated March 2, 2020 and was issued prior to the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020. Therefore, in accordance with section 3(2) of the Ministerial order and pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of Possession.

I accept the parties' undisputed evidence that there is a rental arrear of \$3,540.00 and issue a monetary award in that amount in the landlord's favour.

As the landlord was successful in their application they are also entitled to recover their filing fee from the tenant.

I find there is insufficient evidence in support of the tenant's claim for an order restricting the landlord's right to access the rental unit. I find it sufficient to remind both parties that in accordance with section 8 of *Ministerial Order M089* the landlord's right to enter a rental unit under the *Act* is suspended except in specific instances as allowed under the Order.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service 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.

I issue a monetary order in the landlord's favour in the amount of \$2,750.00. 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: April 21, 2020

Residential Tenancy Branch