



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Onni Property Management Services LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) 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 did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they had served the tenant with the notice of participatory hearing and all evidence by registered mail sent on January 31, 2020. The landlord provided a valid Canada Post tracking number and receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on February 5, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due and owing and the total rental arrear as of the date of the hearing is \$4,600.00. 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 \$1,800.00 to \$4,600.00 as the additional amount of rent arrear coming due could be reasonably anticipated.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

Monthly rent for this periodic tenancy is \$2,300.00 payable on the first of each month. A security deposit of \$1,150.00 was paid at the start of the tenancy and is still held by the landlord. There were originally other parties to the tenancy agreement but they were removed from the agreement by consent of the parties and the respondent is the sole tenant currently on the tenancy agreement.

The landlord testified that there was a rental arrear of \$2,300.00 as at January 6, 2020 the date of the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord served the 10 Day Notice by posting on the rental unit door on that date. The landlord said that the tenant did not make full payment of the arrear nor did they file an application to dispute the notice.

The landlord testified that the tenant failed to pay additional rent and that the total arrear as of the date of the hearing is \$4,600.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,300.00. I find that as the landlord posted the 10 Day Notice on the rental unit door on January 6, 2020 the tenant was deemed served with the notice on January 9, 2020, three days after posting in accordance with sections 88 and 90 of the Act. The tenant had 5 days from January 9, 2020 to either pay the rent in full or file an application to dispute the notice. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the Act nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, January 19, 2020.

The landlord's notice conforms to the form and content requirement of section 52 of the Act as it is signed and dated by the landlord, provides the address of the rental unit and the reason for the tenancy to end.

The landlord issued their 10 Day Notice on January 6, 2020 and filed their application for dispute resolution on January 20, 2020. Therefore, I find that pursuant to section 3(2) of Ministerial Order 89/2020 and section 55(2) of the Act, the landlord is entitled to an Order of Possession.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy as at the date of the hearing, April 3, 2020 is \$4,600.00. Accordingly, I issue a monetary award for unpaid rent of \$4,600.00 pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$1,150.00 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 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 issue a monetary order in the landlord's favour in the amount of \$3,550.00, allowing the landlord to recover the rental arrear and filing fees and retain the deposit for this tenancy.

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 3, 2020

Residential Tenancy Branch