



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 7, 2020 seeking an order of possession for the rental unit, to recover the money for unpaid rent and compensation for damages, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on March 10, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

An agent for the landlord (the “agent”) attended the hearing. They presented a document wherein the landlord grants authorization for the agent to represent their interests. From this, I am satisfied that the relationship between the landlord and the agent is of such a nature that the agent was informed and capable of speaking to the issue on the landlord’s behalf.

The landlord attended the telephone conference all hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

The agent gave testimony that the address they provided on the registered mail package was that of the rental unit, still occupied by the tenant at the time of its mailing. They provided a Canada Post registered mail tracking number. They also gave an account of the movement of the mail: it was posted via registered mail on February 10; refused by the tenant on February 12; then returned to the sender on February 14.

I accept the landlord's undisputed evidence that the tracking history showed that the tenant refused the registered mail package; therefore, I find they avoided service.

Based on the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant's absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to a Monetary Order for Damage or Compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The agent spoke to the terms of the tenancy agreement, a copy of that agreement was not provided as evidence. The tenancy began on January 1, 2017, with the rent amount of \$1,100.00 payable on the 1st of each month. There were no payments of security or pet deposits.

The landlord applied for an Order of Possession pursuant to the 10 Day Notice handed personally to the tenant on January 16, 2020, and a monetary order for \$6,345.00 in unpaid rent from October 2019 through to March 2020. The landlord also applied for monetary compensation for the loss of the April 2020 revenue in the amount of \$1,100.00.

The 10 Day Notice contains the indication that the tenant was served “In person” on January 16, 2020. An agent for the landlord signed and provided their name. A notation on the bottom of the form states: “16/Jan/2020 @ 1705 hrs – served tenant [name] personally”, initialled by the agent.

The 10 Day Notice states that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, January 26, 2020. There is no record of the tenant subsequently paying the rent or applying for dispute resolution.

The reason for the landlord serving the 10 Day Notice is the accumulated unpaid rent up to and including January 1, 2020. In the hearing, the agent stated this amount is the sum of rent including a portion of October (\$845.00), and for each of November, December and January (\$1,100.00 each) for a total of \$4,145.00.

The landlord’s application indicates that there is an “attached statement of account” that sets out the rent amounts for 2019 and 2020. This statement was not provided by the landlord; however, the agent spoke to this in oral testimony and gave the background to this claim. The statement includes \$2,547.93 for electricity and gas; however, the landlord does not include this in the monthly rent. The agent clarified that this amount is not included in the total amount requested for compensation by the landlord.

In summary, the landlord is claiming rental amounts for the months of October 2019 to January 2020, for \$4,145.00. For two more months’ rent – February and March – this brings the total amount of the claim to \$6,345.00. Additionally, the landlord claims the loss of revenue for the rent in April, at \$1,100.00.

Analysis

From the testimony of the agent I am satisfied that a tenancy agreement was in place. The agent provided the specific term of rental payment and amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by January 21, 2020, within the five days granted under 46(4) of the *Act*. The tenant did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 26, 2020.

I make this finding chiefly because there was a pattern of non-payment of rent, starting from November 2019 onwards. The agent stated that the tenant was “always” not paying the rent in this timeframe. Moreover, the agent presented that there was no communication between the landlord and the tenant since service of the 10 Day Notice on January 16, 2020.

The agent provided testimony on the account in question and the accumulation of amount, ultimately claimed as compensation. As presented, I find the amount of \$4,145.00 – as provided for on the 10 Day Notice – is accurate. The tenant did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount.

Moreover, the hearing itself was scheduled to March 10, 2020, and the agent of the landlord stated that the tenant was still living in the rental unit on that date. The tenant has been overholding since the effective date of the end of tenancy, January 26, 2020. For this reason, I grant the landlord the full monthly rental amounts of \$1,100.00 for both February and March.

The landlord claims the April 2020 rent amount as a loss of revenue. I find the landlord is not entitled to an order for this amount; this claim is premature because the rent for April was not due at the time of the hearing.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$6,345.00. As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$6,445.00 for rent owed for October 2019 through to March 2020 and a recovery of the filing fee for this hearing application. The landlord is provided with this

Order 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 *Act*.

Dated: April 7, 2020

Residential Tenancy Branch