



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, OPR, MNRL-S, MNDCL-S, MNDL-S

Introduction

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution on January 26, 2020 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a One Month Notice to End Tenancy for Cause dated January 11, 2020 (the “Notice”);
- For an Order of Possession based on two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities both dated January 11, 2020 (the “10 Day Notices”);
- To recover unpaid rent;
- To keep the security deposit;
- For compensation for damage to the rental unit;
- For compensation for monetary loss or other money owed being the filing fee; and
- For reimbursement for the filing fee.

The Agent appeared at the hearing for the Landlord. The Agent confirmed the Landlord owns the rental unit. The Agent advised that he is a friend of the Landlord and has been dealing with this tenancy for the Landlord. The Agent confirmed he has authority to act for the Landlord in this matter.

The Tenant did not appear at the hearing which lasted 30 minutes.

I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

In relation to the Application, the request for compensation for monetary loss or other money owed is for the filing fee which is covered by the request for reimbursement for the filing fee. The request for monetary loss or other money owed is dismissed without leave to re-apply.

I told the Agent that the request for compensation for damage to the rental unit is premature as the Tenant has until the end of the tenancy to fix the damage. This request is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and some evidence were sent by registered mail to the rental unit on January 30, 2020. The Landlord submitted the receipt and tracking information for this. The tracking information shows a notice card was left in relation to the package on February 04, 2020 but the package was unclaimed.

The Agent testified that the hearing package and all evidence were posted to the door of the rental unit March 11, 2020. The Landlord submitted a photo of this.

Based on the undisputed testimony of the Agent, receipt, tracking information and photo, I am satisfied the Tenant was served with the hearing package and all evidence in accordance with sections 59(3), 88(c), 88(g) and 89(1)(c) of the *Act*. In relation to the registered mail, the Tenant is not permitted to avoid service by failing to pick registered mail up. The Tenant is deemed to have received the hearing package and some evidence February 04, 2020 pursuant to section 90(a) of the *Act*. The Tenant is deemed to have received the package posted to the door March 14, 2020 pursuant to section 90(c) of the *Act*. I find the packages were served in sufficient time to allow the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to keep the security deposit?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Agent testified as follows.

There is a verbal tenancy agreement between the Landlord and Tenant in relation to the rental unit. The tenancy started three years ago and is a month-to-month tenancy. Rent is \$900.00 per month due on the first day of each month. The Tenant paid a \$450.00 security deposit. The Landlord still holds the security deposit and wants to keep it towards unpaid rent.

The Tenant failed to pay \$450.00 of May rent and \$450.00 of June rent in 2019. The Tenant was served the 10 Day Notices. The Tenant did not have authority under the *Act* to withhold rent.

The Landlord submitted a copy of the Notice. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by the Agent. It has an effective date of February 29, 2020. The grounds for the Notice are as follows:

- The Tenant or a person permitted on the property by the Tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the Landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord
 - Put the Landlord's property at significant risk
- The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to:
 - Damage the Landlord's property
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

The Agent confirmed the accuracy of the Proof of Service submitted which shows the Notice was given to the Tenant in person January 11, 2020 by the Agent. The Proof of

Service is signed by a witness. I note that the Proof of Service refers to a One Month Notice to End Tenancy on the first page but that the witness statement refers to a 10 Day Notice to End Tenancy. The Agent confirmed both pages of the Notice were served on the Tenant.

The Agent was not aware of the Tenant disputing the Notice.

The Agent testified that the Tenant has paid rent up until March 31, 2020, other than the rent owing for May and June of 2019. The Agent sought an Order of Possession effective as soon as possible.

Analysis

The Notice was issued under section 47 of the *Act*.

Based on the undisputed testimony of the Agent and in part on the Proof of Service, I am satisfied the Tenant was served with the Notice in accordance with section 88(a) of the *Act*. Based on the same evidence, I am satisfied the Tenant received the Notice January 11, 2020.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

The Tenant had 10 days from receiving the Notice on January 11, 2020 to dispute it under section 47(4) of the *Act*. I accept that the Agent is not aware of the Tenant disputing the Notice. I have no evidence before me that the Tenant did. I am satisfied the Tenant did not dispute the Notice.

Therefore, pursuant to section 47(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended February 29, 2020, the effective date of the Notice. The Tenant was required to vacate the rental unit by February 29, 2020.

The Landlord is entitled to an Order of Possession. I issue the Landlord an Order of Possession effective two days after service on the Tenant pursuant to section 55(2)(b) of the *Act*.

I do not find it necessary to determine whether the Landlord is entitled to an Order of Possession based on the 10 Day Notices given my decision on the Notice.

In relation to unpaid rent, section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the undisputed testimony of the Agent, I am satisfied the Tenant is required to pay \$900.00 in rent by the first day of each month under the tenancy agreement. Based on the undisputed testimony of the Agent and in part on the 10 Day Notices, I am satisfied that the Tenant failed to pay \$450.00 of rent for May 2019 and \$450.00 of rent for June 2019. Based on the undisputed testimony of the Agent, I am satisfied the Tenant did not have authority under the *Act* to withhold rent. I am satisfied the Tenant owes the Landlord \$900.00 in unpaid rent.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$1,000.00 in compensation. Pursuant to section 72(2) of the *Act*, the Landlord can keep the \$450.00 security deposit. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining \$550.00.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court

SUBJECT TO THE ORDER OF THE MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL dated March 30, 2020 and available here:

<https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/covid-19>

The Landlord is entitled to \$1,000.00 and can keep the \$450.00 security deposit. The Landlord is issued a Monetary Order for the remaining \$550.00. This Order must be served on the Tenant. If the Tenant fails to comply with this Order, it 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 01, 2020

Residential Tenancy Branch