



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PURE LIVING BOND STREET LIMITED PARTNERSHIP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR FFL

Introduction

This matter originally proceeded by way of Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2020 (10 Day Notice), for a monetary order for unpaid rent and to recover the cost of the filing fee. On March 5, 2020, an adjudicator adjourned the matter to a participatory hearing which was held on this date, Tuesday, May 5, 2020 at 11:00 a.m. Pacific Time. An Interim Decision dated March 5, 2020 was issued, which should be read in conjunction with this decision.

On May 5, 2020, the owner for the landlord company, FT (landlord) attended the participatory hearing and was affirmed. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 11, 2020 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on March 11, 2020 and was addressed to the tenant at the rental unit and that the tenant continues to occupy the rental unit. The registered mail tracking number has been included on the style of cause for ease of reference and has been identified as 1. According to the online registered mail website, the registered mail package remains as unclaimed. In addition, the landlord testified that the original Direct Request (DR) package of material was also mailed by registered mail on March 4, 2020. The second registered mail tracking number has been included on the style of cause for ease of reference and has

been identified as 2. The second package is also showing as unclaimed according to the registered mail website.

Based on the above and without any evidence before me to prove to the contrary, and pursuant to section 90 of the Act, which states that documents served by registered mail are deemed served 5 days after they are mailed, I find the tenant was served twice as follows:

1. Original DR package – deemed served as of March 9, 2020
2. Second package advising of participatory hearing – deemed served as of March 16, 2020.

Given the above, the hearing continued without the tenant present as I find the tenant was duly served. I also find this matter to be unopposed by the tenant, who has been deemed served.

Preliminary and Procedural Matters

The landlord testified that in addition to the rent owed in the original claim for February 2020, the tenant has subsequently not paid the rent for March, April or May of 2020. As a result of the above, the landlord requested to amend the application to include rent owed for March, April and May of 2020. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application for March and April 2020 rent does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act to include loss of rent for March and April of 2020. As it is only May 5, 2020, and the landlord may be able to find a new tenant before the end of May, I have not considered loss of rent for May 2020. The tenant is granted leave to reapply as a result for May 2020 rental loss including any future loss related to this tenancy.

In addition, the landlord a new email address for the tenant, which was updated in the landlord's application. The landlord was advised that the decision will be emailed to both parties. Any responsive orders will be emailed to the landlord only for service on the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?

- Is the landlord entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A fixed-term tenancy began on January 19, 2020. Monthly rent in the amount \$2,800.00 is due on the first day of each month. The tenant failed to pay a security deposit according to the landlord but did pay \$1,000.00 for January 19-31, 2020 rent.

The landlord testified that the tenant has failed to pay rent for February, March, April and May of 2020. The landlord applied for dispute resolution on February 19, 2020. The landlord provided a Proof of Service document that indicates that the landlord served the 10 Day Notice by posting it to the tenant's door with a witness present. The 10 Day Notice indicates that \$2,320.00 was owed in rent as of February 1, 2020. The landlord clarified that while the tenancy agreement stated rent was \$2,800.00 per month, that for February 2020, rent was reduced to \$2,320.00 due to another tenant occupying the rental unit that vacated at the end of February 2020. The landlord also stated that as of March 1, 2020, rent was back up to \$2,800.00 as the tenant occupied the entire home at that point. The landlord testified that the tenant did not dispute the 10 Day Notice or pay the rent owing. The effective vacancy date listed on the 10 Day Notice was February 16, 2020, which has passed.

The landlord is seeking an order of possession, a monetary order for unpaid rent, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlord's undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. I find the tenant was deemed served as of February 6, 2020, as documents posted to the tenant's door are deemed served three days after they are posted pursuant to section 90 of the Act. The effective vacancy date of the Notice is listed as February 16, 2020, which has passed. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice,

which was February 16, 2020. According to the landlord, the tenant continues to occupy the rental unit. Therefore, **I grant** the landlord an order of possession effective **five (5) days** after service on the tenant. I have used 5 days instead of 2, due to the current State of Emergency related to COVID-19 and *Ministerial Order M089*.

I find the tenancy ended on February 16, 2020 and that the tenant has overheld the rental unit since that date.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlord to be unopposed by the tenant. I accept the disputed testimony of the landlord that the tenant owes rent as follows:

ITEM DESCRIPTION	AMOUNT OWED
1. February 2020 unpaid rent	\$2,320.00
2. March 2020 loss of rent	\$2,800.00
3. April 2020 loss of rent	\$2,800.00
TOTAL	\$7,920.00

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlord has met the burden of proof and has established a monetary claim of **\$7,920.00** as indicated above.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act.

Monetary Order - I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$8,020.00** owing by the tenant to the landlord.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective five (5) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on February 16, 2020.

The landlord has established a total monetary claim of \$8,020.00 as indicated above. The landlord is granted a monetary order under section 67 of the Act in that amount. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision and orders will be emailed to the landlord for service on the tenant. The tenant will be sent the decision by email as indicated above.

The link to *Ministerial Order M089* can be found at:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 5, 2020

Residential Tenancy Branch