



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nanaimo Manor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNRL, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent or money owed, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference for this hearing.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on March 13, 2020. The landlord provided the tracking information during the hearing. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with the Application and evidence on March 18, 2020, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served two, Day Notices to End Tenancy for Unpaid Rent. The tenant was served a 10 Day Notice by way of registered mail on January 21, 2020, and another 10 Day Notice by way of registered mail on February 13, 2020. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served

with the 10 Day Notices 5 days after mailing, on January 26, 2020 and February 18, 2020 respectively.

Although the landlord applied for a Monetary Order of \$3,044.00 in their initial claim, the tenant has failed to pay rent for the months of March and May 2020. Since the filing of this application, another \$1,472.00 in rent has become owing that was not included in the original application. I have accepted the landlord's request to amend their original application from \$3,044.00 to \$4,416.00 (plus \$100.00 filing fee) to reflect the additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on March 1, 2015, with currently monthly rent set at \$1472.00, payable on the first of every month. The landlord believes that the landlord holds a security deposit in the amount of \$625.00 for this tenancy.

The landlord served the tenant with 2, 10 Day Notices to End Tenancy on January 21, 2020 and on February 13, 2020. The landlord testified that the tenant failed to pay the January and February 2020 rent, but did make two equal payments of \$736.00 towards the January 2020 rent on April 9, 2020 and on April 24, 2020. The landlord testified that the tenant also paid the April 2020 rent. The landlord testified that the tenant still owes rent for February, March, and May 2020 rent for total outstanding rent of \$4,416.00.

The landlord is seeking an Order of Possession, as well as a Monetary Order for unpaid rent and recovery of the filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of January 26, 2020, the date the tenant is deemed to have been served the first 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of January 26,

2020. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on February 5, 2020, the corrected, effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 5, 2020. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. As the tenant has not moved out, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

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.

The landlord provided undisputed evidence that the tenant failed to pay \$4,416.00 in outstanding rent at the time of the hearing. Therefore, I find that the landlord is entitled to \$4,416.00 for the period up to May 2020.

As the landlord was successful in their application, I find that the landlord is entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (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 \$4,516.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent and the filing fee for this application.

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: May 7, 2020

Residential Tenancy Branch