



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on March 5, 2020 seeking an order of possession of the rental unit. Additionally, the landlord seeks an order to recover money for unpaid rent and utilities, and 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 May 8, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The agent for the landlord (hereinafter the “landlord”) attended the telephone conference call hearing; the tenants 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 they served the document at a verified address allowed under section 89 of the *Act*, and I must accept that evidence.

In the hearing the landlord stated that they used Canada Post registered mail to send the Notice of Hearing to each of the tenants. This package included the evidence the landlord presented in this hearing. They provided a Canada Post registered mail tracking number for each tenant involved. In the hearing, they checked the registered mail details and confirmed that each was delivered with the signature of the addressee upon receipt.

I accept the landlord’s undisputed evidence that the package was sent to each tenant via registered mail. Based on the submissions of the landlord, I accept the landlord served each tenant with 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 a Monetary Order for Damage or Compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to retain the security deposit held, pursuant to section 38 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 that which are relevant to the issues and findings in this matter are described in this section.

The landlord applied for an order of possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") given to the tenants on February 11, 2020, and a monetary order for the amount of \$14,000.00 that represents unpaid rent for the month of December 2019. The landlord applies for an order authorizing the application of the security deposit to the monetary claim.

The landlord submitted the following evidentiary material:

- A copy of the residential tenancy agreement that was signed by the landlord and the tenants on April 28, 2017. The monthly rent was \$2,500.00 payable on the first day of each month. The tenancy commenced on May 1, 2017.
- On the date of signing, the tenants paid \$1,250.00 for a security deposit, and \$1,250.00 for a pet damage deposit. This totals \$2,500.00.
- A copy of a 'Rent Increase Addendum' shows an increased monthly rent amount starting October 1, 2018. This raised the monthly amount of rent to \$2,600.00.

- A copy of the 10 Day Notice, dated February 11, 2020, for \$12,400.00 in unpaid rent. This 10 Day Notice states that the tenants had five days from the date of service to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated on the 10 Day Notice, February 22, 2020.
- A copy of the Proof of Service of the 10 Day Notice – an agent of the landlord affixed the 10 Day Notice to the tenants' door on February 11, 2020 at 1:11 p.m. This bears a witness name of an individual who observed that service.
- A copy of the Monetary Order Worksheet that shows the rent amount owing for unpaid rent: \$14,000.00. An attached statement for 2019 shows rents due, payment, and balance owing amounts, updated to March 5, 2020.
- Screenshots of text messages, showing the landlord's dialogue with the tenant, advising of the outstanding \$14,000 balance owing.

In the hearing, the landlord advised that they were not certain whether the tenants remained in the rental unit or not. As of the date of the hearing, the occupancy was past the vacancy date provided in the 10 Day Notice. There is no record of the tenants subsequently paying the rent or applying for dispute resolution.

The landlord added that the amount of April 2020 rent was outstanding. This adds another \$2,600.00 on to the claim. In the hearing the landlord wished to amend the claim to include this extra compensation amount.

The landlord also advised that the tenant made one payment on March 20, 2020. This was \$1,000.00. They added that this amount shall be subtracted from the total compensation claim amount. This was the last communication the landlord had with the tenants.

Adding the month of April rent, and subtracting the March 20 partial payment, the total monetary claim from the landlord is \$15,600.00 for unpaid rent amounts.

Analysis

The *Act* section 46(4) allows a tenant who receives five days to pay the overdue rent or submit an Application for Dispute Resolution to cancel a 10 Day Notice. Section 46(5) stipulates that if a tenant fails to apply seeking to cancel the 10 Day Notice, they are conclusively presumed to have accepted the tenancy ends on the effective date of the 10 Day Notice and they must vacate the unit.

Based on the oral testimony, and in accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on February 14, 2020 three days after its posting on the door by the landlord.

I accept the evidence before me that the tenant failed to pay the rent owed in full by February 19, 2020, within the five days granted under section 46(4) of the *Act* and 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, February 22, 2020.

Based on the evidence before me, I find the landlord is entitled to an Order of Possession. As per the landlord's request I will issue the Order of Possession under section 55 of the *Act*.

Section 26 of the *Act* outlines a tenant's duty to pay rent:

- (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.

I find there was a pattern of non-payment of rent, starting from January 2019 onwards. The landlord stated that they tried to give the tenants opportunities to continue paying on a regular basis, but the tenants were not able to comply.

The landlord provided testimony on the account ledger. As presented, I find the amount of \$14,000.00 is accurate through March 2020. 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 for May 8, 2020, and the landlord stated that they were certain the tenants were still living in the rental unit on that date. The tenants have been overholding since the effective date of the end of tenancy, February 22, 2020. For this reason, I grant the landlord the full monthly rental amount of \$2,600.00 for April 2020.

I find the landlord is entitled to an order of possession as well as an award for the unpaid rent amount of \$15,600.00.

The relevant portion of the Act regarding the landlord's right to hold the security deposit is section 38:

- (1) . . . within 15 days after the later of
 - (a) the date the tenancy ends, and
 - (b) the date the landlord receives the tenant's forwarding address in writing;

The landlord must do one of the following:

- (c) repay. . . any security deposit. . . to the tenant. . . ;
- (d) make an application for dispute resolution claiming against the security deposit. . .

Subsection 4 sets out that the landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

In this matter, the end of tenancy date was February 22, 2020. On March 5, 2020, the landlord amended their application to apply for the unpaid rent compensation. This claim against the security deposit is within the legislated timeframe set forth in section 38(1).

The landlord has properly made a claim against the security deposit and has the right to do so. With the landlord holding this amount of \$2,500.00, I order this amount deducted from the recovery of the rental amount of \$15,600.00. This is pursuant to section 72(2)(b) of the Act.

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 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 \$13,200.00 for unpaid rent 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: May 11, 2020

Residential Tenancy Branch