



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened as a result of the Landlord's application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for:

- an order of possession, further to the Landlord having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated February 11, 2020 ("10 Day Notice"),
- recovery of the \$7,500.00 in unpaid rent the Tenant owed the Landlord as of February 1, 2020, and
- recovery of the \$100.00 cost of the Application filing fee.

The Landlord and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Agent, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and the Agent.

I explained the hearing process to the Landlord and Agent and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada

Post registered mail, sent on March 23, 2020. The Agent provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord and Agent provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to them and mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

The Landlord said that the amount of rent owing at the time he applied for dispute resolution has changed, as the Tenant has not paid rent for March, April or May 2020, as well as the amount owing as of February 1, 2020. The Landlord said that the Tenant did pay him \$500.00 on March 13, 2020, and \$500.00 on April 9, 2020. As a result, the Landlord indicated that he seeks the amended amount of \$8,900.00 in unpaid rent owing currently. The Landlord requested that his Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought by the Landlord, reflecting the ongoing failure of the Tenant to pay her monthly rent owing. I find no prejudice to the Tenant, as she is aware of how much rent she has or has not paid, so she could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after including the amounts paid and owing by the Tenant since February 2020, I find it reasonable to amend the amount of the monetary order sought by the Landlord from \$7,500.00 to \$8,900.00.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

In the hearing, the Landlord said that the periodic tenancy began on March 11, 2011, with a monthly rent of \$800.00, due on the first day of each month. The Landlord said

that the Tenant paid him a security deposit of \$400.00, and no pet damage deposit.

The 10 Day Notice submitted by the Landlord indicates that another agent, S.M., served the Tenant with the 10 Day Notice by posting it on the rental unit door on February 11, 2020. The Agent confirmed the following information in the hearing: The 10 Day Notice was signed and dated February 11, 2020, has the rental unit address, and was served by being posted it on the rental unit door on February 11, 2020. Pursuant to section 90 of the Act, the 10 Day Notice was deemed served on the Tenant on February 14, 2020, three days after it was posted on the door. It had an effective vacancy date of February 21, 2020, which is automatically corrected to February 24, 2020, by section 53 of the Act. The reason set out on the 10 Day Notice for why it was served, was because the Tenant owed the Landlord \$7,500.00 in unpaid rent as of February 1, 2020.

The Landlord submitted a statement of account, which contains the following information regarding the amounts he said the Tenant has paid, and the balance that she continues to owe the Landlord in unpaid rent. I added to this statement the amounts the Landlord indicated that the Tenant had been paid in March and April 2020, plus the amounts owing for March, April and May 2020.

Due Date	Amount Due	Amount Paid	Date Paid	Balance
Jan 1, 2019	\$800.00	\$500.00	Jan. 15, 2019	\$300.00
Feb, 2019	\$800.00	\$500.00	Feb. 15, 2019	\$600.00
March, 2019	\$800.00	\$500.00	Mar. 15, 2019	\$900.00
April, 2019	\$800.00	\$0.00		\$1,700.00
May, 2019	\$800.00	\$700.00	May 15, 2019	\$1,800.00
June, 2019	\$800.00	\$0.00		\$2,600.00
July, 2019	\$800.00	\$500.00	July 15, 2019	\$2,900.00
Aug., 2019	\$800.00	\$0.00		\$3,700.00
Sep., 2019	\$800.00	\$500.00	Sep. 15, 2019	\$4,000.00
Oct., 2019	\$800.00	\$0.00		\$4,800.00
Nov., 2019	\$800.00	\$500.00	Nov. 15, 2019	\$5,100.00
Dec., 2019	\$800.00	\$0.00		\$5,900.00
Jan., 2020	\$800.00	\$0.00		\$6,700.00
Feb., 2020	\$800.00	\$0.00		\$7,500.00
March, 2020	\$800.00	\$500.00	Mar. 13, 2020	\$7,800.00
April, 2020	\$800.00	\$500.00	April 9, 2020	\$8,100.00
May, 2020	\$800.00	\$0.00		\$8,900.00

Analysis

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

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

. . .

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[emphasis added]

The Tenant did not pay any rent to the Landlord within the five days after receiving the 10 Day Notice, and she did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me and pursuant to 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 it was posted on the rental unit door.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or

the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$7,500.00 in unpaid rent as of February 1, 2020.

Further, there is evidence before me that the Tenant made some payments toward the outstanding rent owing in March and April 2020; however, based on the evidence before me overall, I find that the Tenant currently owes the Landlord \$8,900.00 in unpaid rent. I, therefore, award the Landlord **\$8,900.00** from the Tenant for unpaid rent.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of February 21, 2020. I find that the effective date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant. As noted above, the 10 Day Notice was deemed served on the Tenant on February 14, 2019. Therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to February 24, 2019. I find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and she did not provide any documentary evidence establishing that she had a right under the Act to deduct all or a portion of the \$7,500.00 in rent owed for the months prior to February 1, 2020. Therefore, I grant the Landlord's Application for an Order of Possession, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the Tenant has continued to fail to pay her rent in full up to the time of the hearing, the Order of Possession will be effective two days after service of the Order on the Tenant.

I also award the Landlord with recovery of the \$100.00 Application filing fee.

Further, I grant the Landlord a monetary award of \$8,900.00 against the Tenant for unpaid rent, as of May 2, 2020. I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's \$400.00 security deposit in partial satisfaction of the Landlord's monetary claim. I, therefore, award the Landlord a Monetary Order in the amount of \$8,600.00 for the balance owed to him by the Tenant.

Conclusion

The Landlord is successful in his Application for an Order of Possession and a monetary award for rent owing in the amount of \$8,900.00. I also award the Landlord recovery of the \$100.00 Application filing fee for a total award of \$9,000.00.

The Landlord is authorized to retain the Tenant's \$400.00 security deposit in partial satisfaction of the monetary award. I grant the Landlord a Monetary Order for the remainder owing in the amount of **\$8,600.00**.

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 Landlord is provided with the Order of Possession 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, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 11, 2020

Residential Tenancy Branch