



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with the landlord's application for dispute resolution and notice of hearing on April 10, 2020. He said that he posted the landlord's evidence package to the tenant's rental unit door on April 15, 2020. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was personally served with the landlord's application and notice of hearing on April 10, 2020 and the tenant was deemed served with the landlord's evidence package on April 18, 2020, three days after its posting.

The landlord confirmed that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 2, 2020 ("10 Day Notice"), on the same date by way of posting to the rental unit door. The landlord provided a signed, witnessed proof of service with his application. The effective move-out date on the notice is April 1, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on March 5, 2020, three days after its posting.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include April and May 2020 rent of \$1,300.00 for each month. I find that the tenant is aware that rent is due as per her tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

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

Background and Evidence

While I have turned my mind to the documentary evidence and testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on December 1, 2019. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$400.00 and a pet damage deposit of \$200.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$3,100.00 due on February 1, 2020. The landlord testified that the tenant failed to pay rent of \$1,300.00 for each of January, February and March 2020, totalling \$3,900.00 minus the \$800.00 payment made by the

tenant, leaving a balance of \$3,100.00. This information was indicated on the 10 Day Notice.

The landlord said that the tenant made the \$800.00 rent payment on February 28, 2020, after which a letter was given by the landlord to the tenant on February 29, 2020, accepting the rent for “use and occupancy only” and “not reinstating the tenancy.” The landlord maintained that the tenant also failed to pay rent of \$1,300.00 for each of April and May 2020. The landlord seeks a monetary order of \$5,700.00 for unpaid rent plus the \$100.00 application filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on February 1, 2020, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. 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 April 1, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by April 1, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord’s 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$5,700.00 from January to May 2020. Accordingly, I find that the landlord is entitled to rental arrears of \$5,700.00 from the tenant.

The landlord continues to hold the tenant’s security deposit of \$400.00 and pet damage deposit of \$200.00. Over the period of this tenancy, no interest is payable on both deposits. Although the landlord did not apply to retain the deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant’s deposits, totalling \$600.00, in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

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 order the landlord to retain the tenant's entire security and pet damage deposits, totalling \$600.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$5,200.00 against the tenant. 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 12, 2020

Residential Tenancy Branch