



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR FFL

Introduction

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

- an order of possession for non-payment of rent pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. Two representatives of the landlord attended the hearing (an agent "**JS**" and the owner "**JJ**") and were given a full opportunity to be heard, to present affirmed 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. I also confirmed from the teleconference system that JS, JJ and I were the only ones who had called into this teleconference.

JS testified that the landlord served that the tenant personally with the notice of dispute resolution form and evidence on March 23, 2020. I find that the tenant was served with this package on that date, in accordance with section 88 and 89 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover their filing fee.

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and a prior owner of the residential property entered into an oral tenancy agreement starting sometime prior to the landlord taking possession of the residential

property on November 1, 2019. The residential property is a hotel, that also rents out suites on a long-term basis. The tenant rents one of those suites. Monthly rent is \$450 and is payable on the first of each month. The tenant did not pay the landlord or the prior owner any security deposit.

The JS testified that the tenant did not pay rent for the month of March, 2020 in the amount of \$450.

The landlord personally served a 10 Day Notice to End Tenancy (the “**Notice**”) on the tenant on March 3, 2020 for \$450 in unpaid rent due on March 1, 2020. The Notice has an effective date on March 13, 2020. The landlord entered a copy of the Notice into evidence.

JS testified that the tenant did not apply to dispute the Notice within five days of service, or pay the arrears within five days, or at all.

JS testified that, to date, the tenant is \$1,350 in rental arrears, representing unpaid rent for the months of March, April, and May, 2020. However, JJ confirmed that the landlord is not seeking a monetary order against the tenant at this application.

Analysis

Based on the testimony of JS, I find that the tenant was obligated to pay monthly rent in the amount of \$450. I accept the evidence before me that the tenant has failed to pay rent for March, April, or May 2020.

I find that the tenant was served with the Notice personally on March 3, 2020. I accept the landlord’s undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 46(4) of the Act and did not apply to dispute the 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 Notice, March 13, 2020.

Therefore, I find that the landlord is entitled to an order of possession against the tenant, effective two days of being served with a copy of this decision and attached order(s) by the landlord.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

Conclusion

Pursuant to section 72 of the Act, I order that the tenant pay the landlord \$100, representing the repayment of the landlord's filing fee.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

The landlord is provided with these orders in the above terms and must serve the tenant with these orders as soon as possible.

Residential Tenancy (COVID-19) Order, MO 73/2020 (Emergency Program Act) made March 30, 2020 (the "**Emergency Order**") permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated).

The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act. As such, it may not be filed in the Supreme Court of BC until the state of emergency declared March 18, 2020 ends (as per section 1 of the Emergency Order).

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 14, 2020

Residential Tenancy Branch