



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF

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 pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on March 31, 2020 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and make submissions. The tenant confirmed receipt of the Notice of Hearing and Dispute Resolution Package.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include loss of rent for the months of April and May 2020. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

Is the landlord entitled to recover the foiling fee?

Background and Evidence

The tenancy began in August 2017. The current monthly rent is \$2000.00 payable on the 1st day of each month. A security deposit was not collected at the start of the tenancy.

The landlord submitted a copy of a 10 Day Notice dated February 17, 2020. The 10 Day Notice indicates an outstanding rent amount of \$2000.00 which was due on February 1, 2020. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on February 17, 2020 he served the tenant with the 10 Day Notice by depositing a copy in the tenant's mailbox.

The landlord testified the outstanding rent was not paid within 5 days and no rent has been paid since.

The landlord's amended monetary claim is for outstanding rent in the amount of \$9700.00. The landlord testified that this includes unpaid rent as per below:

Item	Amount
January 2020	1700.00
February 2020	2000.00
March 2020	2000.00
April 2020	2000.00
May 2020	2000.00
Total	\$9700.00

The tenant acknowledged receipt of the 10 Day Notice dated February 17, 2020. The tenant acknowledged rent was not paid in full but testified that he paid a “portion”. The tenant argued he had a debt with the landlord not related to the rent and over the 2 ½ year tenancy he has made payments for the rent and additional amounts towards this other debt. The tenant argued that some of the debt payments were in fact supposed to be applied to the rent and not to the debt. The tenant testified that he has receipts, but none were submitted as evidence. The tenant acknowledged rent was outstanding but disputed the amount claimed by the landlord. The tenant testified that it was “somewhere around the amount claimed”. The tenant testified that he has gone into debt with the landlord before but has always paid. The tenant testified that he could not pay the rent in full due to “circumstances”.

Analysis

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice.

I am satisfied that the tenant was deemed served with the 10 Day Notice on February 20, 2020, three days after being deposited in the mailbox, pursuant to sections 88 & 90 of the Act. The tenant would have had until February 25, 2020 to pay the outstanding amount as per the 10 Day Notice which he failed to do. The tenant testified that a “portion” was paid but submitted no evidence in support.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that 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 accept the landlord’s testimony and claim for outstanding rent of \$9700.00. The tenant acknowledged that rent was outstanding “somewhere close to this amount”. The tenant did not submit any evidence of rent or debt payments in support of his testimony that a

portion of this amount was paid and or any proof or calculations of debt versus rent payments.

I find that the landlord is entitled to a Monetary Order in the amount of \$9800.00 which included the \$100.00 filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$9800.00. 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 22, 2020

Residential Tenancy Branch