



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 dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "*Act*"), for an order of possession to enforce 10-Day Notice for Unpaid Rent, issued on March 21, 2020, for a monetary order for unpaid rent or utilities, for a monetary order for compensation for damage caused by the tenant, their pets or guests to the unit, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and their wife (the "Landlord") attended the hearing (the "Landlord") and were both affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been sent to the Tenants by registered mail on April 11, 2020. Section 90 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenants have been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters- Related Issues

I have reviewed the Landlord's application, and I note that they have applied to enforce a notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Landlord's request to enforce the Notice. As one of these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Landlord's claims to request a monetary order for compensation for damage caused by the Tenant.

I will proceed with this hearing on the Landlord's claim to enforce the 10-Day Notice to end tenancy, for a monetary order for unpaid rent and to recover the filing fee paid for their application.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the *Act*?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to retain the security and pet damage deposits?
- Is the Landlord entitled to recover the filing fee paid for this application?

Background and Evidence

The Landlord testified that the tenancy began on September 1, 2019, as a month to month tenancy; rent in the amount of \$950.00 is to be paid by the first day of each month and that the Tenant had paid a \$475.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Tenant with the 10-Day Notice to end tenancy for Unpaid Rent, by personal service on March 21, 2020, with an effective date of April 1, 2020. The 10-Day Notice listed an unpaid rent amount of \$2,500.00,

consisting of rent due of \$600.00 for January 2020, \$950.00 for February and March 2020. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had not paid the outstanding rent as indicated on the Notice or disputed the Notice within five days; the Landlord requested an order of possession to enforce their Notice.

The Landlord testified that the Tenant had paid \$500.00 on April 3, 2020, \$1000.00 on April 20, 2020, and \$1,100.00 on May 14, 2020, but that as of the date of this hearing the Tenant was outstanding \$1,800.00 in rent for April and May 2020. The Landlord requested a monetary order for the outstanding April and May 2020, rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.*

(2) *A notice under this section must comply with section 52 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(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.*

I accept the undisputed testimony of the Landlord that the Tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice and that they have not moved out of the rental unit, in accordance with the Notice. Therefore, I find that the Tenant have not paid the rent or disputed the Notice, within the legislated timeline and are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an order of possession, effective **two days** after service on the Tenant. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

I acknowledge that the Provincial Government declared a state of emergency on March 18, 2020. I note that 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 and can only be enforced through the Supreme Court of BC once the Emergency Order is lifted. The Landlord acknowledged understanding of these conditions during this hearing.

Additionally, I accept the Landlord's testimony that the Tenant has not paid the rent for April and May 2020, and that as of the date of this hearing is \$1,800.00 in rent is due to the Landlord. I find that the Landlord has established an entitlement to a monetary award for the outstanding rent for April and May 2020, in the amount of \$1,800.00, and I authorized the Landlord to retain the Tenant's security deposit as partial satisfaction of this award.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application.

I grant the Landlord a **Monetary Order** in the amount of **\$1,450.00**; consisting of \$1,800.00 in outstanding rent for the months of April and May 2020, \$100.00 in the recovery of the Landlord's filing fee, less the \$450.00 the Landlord is holding in a security deposit for this tenancy.

Conclusion

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenant must be served with this Order. 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.

I grant the Landlord a **Monetary Order** in the amount of **\$1,450.00**. 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 *Residential Tenancy Act*.

Dated: May 28, 2020

Residential Tenancy Branch