



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served to the tenant;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

The landlords attended the hearing; however, the tenant did not attend.

The landlord stated they served the tenant with their application for dispute resolution and Notice of Hearing by email, with attachment, on May 4, 2020.

The landlords said that they used the only email they have ever had for the tenant, which was a Craigslist reply email. The landlord said that this email account and text messages were the only way that they have ever communicated with the tenant since the tenancy began.

The landlord submitted that there was a response from the tenant's email address, which indicated that the respondent was a family friend monitoring the tenant's email. The friend, in the response email, said the tenant's phone was smashed and he was in the hospital with a severe lung infection.

The landlords submitted that they asked the building manager of the condominium building if the tenant was in the hospital. The building manager replied and said the tenant was not in the hospital and had been out walking his two dogs.

The landlords submitted that the email response was from the tenant and that he was playing games with the response.

The Director's Order, signed on March 30, 2020, in response to the State of Emergency made under the *Emergency Program Act* on March 18, 2020, orders that until the declaration of the state of emergency is cancelled or expires without being extended, a party may serve documents to the other party by, among others, email to the email address of that person.

The document is deemed sufficiently served if that person, the tenant here, confirms receipt of the document by return email.

I find that to be the case, as the landlords submitted a copy of the tenant's return email, on May 6, 2020.

I therefore accept that the tenant was served notice of this hearing in a manner complying with the Director's Order dated March 30, 2020 and the hearing proceeded in the tenant's absence.

The landlords were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the landlords and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit due to unpaid rent, an order for monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence was that this tenancy began on February 1, 2020, and monthly rent owed by the tenant is \$1,700, due on the 3rd day of each month. The

landlords submitted a copy of the written tenancy agreement, signed by the tenant on January 28, 2020.

The landlords also said that the tenant was obligated to pay a security deposit and pet damage deposit of \$850, each, but has failed to pay either of them.

The landlords submitted that the tenant failed to pay the full monthly rent for March 2020, and that as a result, he was served with a 10 Day Notice to End Tenancy for Unpaid Rent (Notice), by registered mail on March 16, 2020, listing unpaid rent of \$1100 owed as of March 3, 2020. The effective move-out date listed was March 28, 2020. The landlords provided a copy of the Notice.

The landlords also included the amount of \$1,700 for the security deposit and pet damage deposit owed as part of unpaid rent on the Notice.

The Notice informed the tenant that he had five (5) days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlords asserted that since the issuance of the Notice, the tenant has not made any rent payments, and remains in the rental unit without paying any other rent for March, April, or May, 2020. The landlords claim that the tenant owes a rent deficiency of \$4500 and that because of this, they are requesting an order of possession for the rental unit and a monetary order of \$4500 for unpaid rent through May 2020.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. When a tenant fails to comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

Order of Possession –

I find the landlord submitted sufficient evidence to prove that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, that the tenant did not pay the

outstanding rent or file an application for dispute resolution in dispute of the Notice within 5 days of service and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, March 28, 2020. Instead, the tenant remains in the rental unit, without having paid any further rent.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlords are entitled to and I grant them an order of possession for the rental unit effective 2 days after service of the order upon the tenant.

The order of possession for the rental unit is included with the landlords' Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

Although I have ordered the tenancy will end pursuant to section 46 and 55(1)(b) of the Act, *Ministerial Order M089* issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020, prohibits the enforcement of certain Residential Tenancy Branch orders made during the state of emergency. Enforcement of other Residential Tenancy Branch orders may be affected by the suspension of regular court operations of the BC Supreme Court and Provincial Court.

I advise the tenant of the following taken from the Residential Tenancy Branch (RTB) website:

Tenants should pay rent wherever possible. The legislation still requires that tenants pay rent in full and on time.

- **The state of emergency temporarily suspends a landlord's ability to end a tenancy if a tenant does not pay the rent in full and on time.**
- **A tenant who has not paid rent could face eviction once the state of emergency is over.**

Monetary Order –

Although the landlords' monetary claim for unpaid rent was \$1,100, I find it reasonable under Rule 4.2 to amend the landlords' application to increase their claim to include unpaid rent for April and March 2020. As such, I considered the total, undisputed amount of \$4,500 through May 2020.

I find that the landlords submitted sufficient evidence to show that the tenant owed a rent deficiency of \$1,100 for March 2020, the amount listed on the Notice, and \$1,700 for April and May, 2020, each, or \$4,500 in total. I therefore find the landlords are entitled to a monetary award of \$4,500, for unpaid rent, through May 2020.

I also grant the landlords a monetary award of \$100 for recovery of the filing fee paid for their application.

I grant the landlords a final, legally binding monetary order pursuant to section 67 of the Act for the amount of \$4,600, comprised of unpaid rent of \$4,500 as noted above and recovery of the filing fee of \$100.

Should the tenant fail to pay this amount to the landlords without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

I find it important to note that I have not considered the landlords' request for payment of the security deposit and pet damage deposit, as I find it unrelated to the matter of unpaid rent and possession of the rental unit.

The landlords are at liberty to pursue this matter in a future dispute resolution application.

Conclusion

The landlords' application for an order of possession for the rental unit, a monetary order for unpaid rent and recovery of their filing fee has been granted.

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 29, 2020

Residential Tenancy Branch