



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL

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; and
- a monetary order for unpaid rent, pursuant to section 67.

The two tenants, "tenant CF" and "tenant JS," did not attend this hearing, which lasted approximately 20 minutes. The landlord's agent HJ ("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 confirmed that he is the property manager for the landlord named in this application and that he had permission to speak on his behalf.

The landlord testified that both tenants were separately served with the landlord's application for dispute resolution and notice of hearing on April 28, 2020, by way of registered mail. The landlord provided two Canada Post receipts, tracking numbers and tracking reports with this application. The landlord confirmed both Canada Post tracking numbers verbally during the hearing. He claimed that the packages were delivered on April 29, 2020, but no signature was obtained because of the current covid-19 pandemic. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were both deemed served with the landlord's application and notice of hearing on May 3, 2020, five days after their registered mailings.

The landlord stated that the landlord's evidence package was emailed to tenant CF on May 13, 2020, and it was acknowledged received on the same date by tenant CF. The landlord provided a copy of both emails. In accordance with section 71(2)(c) of the *Act*, I find that both tenants were sufficiently served with the landlord's evidence package on

May 13, 2020, the date that tenant CF confirmed receipt. Email is a permitted method of service during the covid-19 pandemic and the state of emergency, as per the director's order on email service, dated March 30, 2020.

The landlord provided evidence that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 15, 2020 ("10 Day Notice"), on the same date by way of posting to the rental unit door. The effective move-out date on the notice is March 25, 2020. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's 10 Day Notice on March 18, 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 May 2020 rent of \$3,300.00. I find that the tenants are aware that rent is due as per their tenancy agreement. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier, for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for increased rent, despite the fact that they 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?

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 15, 2019. Monthly rent in the amount of \$3,300.00 is payable on the first day of each month. A security deposit of \$1,650.00 was paid by the tenants and the landlord agreed

to apply it towards half of March 2020 rent on March 29, 2020, at the request of the tenants. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenants continue 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 \$3,300.00 due on March 1, 2020. The landlord testified that the tenant failed to pay rent of \$3,300.00 for each of March, April and May 2020, totalling \$9,900.00.

The landlord said that after the tenants' \$1,650.00 security deposit was applied towards March 2020 rent, the balance owing was \$1,650.00. He stated that the landlord received a direct payment from the government for a housing benefit of \$300.00 per month, for April and May 2020 rent, totalling \$600.00. He said that the outstanding rent owed for each of April and May 2020, was \$3,000.00 for each month, for a total of \$6,000.00.

The landlord seeks a monetary order of \$7,650.00 for unpaid rent from March to May 2020.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on March 1, 2020, within five days of being deemed to have received the 10 Day Notice. Although the tenants made partial payments towards the rent, they did not pay the full rent due. The tenants have 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 tenants to take either of the above actions within five days led to the end of this tenancy on March 28, 2020, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by March 28, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, 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 tenants 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 tenants who do 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 tenants failed to pay rent of \$7,650.00 from March to May 2020. Accordingly, I find that the landlord is entitled to rental arrears of \$7,650.00 from the tenants.

As the landlord has used the tenants' security deposit of \$1,650.00 towards the March 2020 rent, I cannot apply it against the outstanding rent owed by the tenants.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 issue a monetary order in the landlord's favour in the amount of \$7,650.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 29, 2020

Residential Tenancy Branch