



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for unpaid rent;
- Recovery of the filing fee, and
- An Order of Possession for an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The hearing was convened by telephone conference call and was attended by the Agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent provided affirmed and undisputed testimony that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and Notice of Hearing, as well as all of the Landlord’s documentary evidence, was sent to the Tenant at the rental unit by registered mail on April 17, 2020, and provided a copy of the registered mail tracking information for consideration. Tracking information for the registered mail shows that it was sent on April 17, 2020, and placed in a community mailbox on April 20, 2020. As a result, I find that the Tenant was deemed served on April 22, 2020, five days after the registered mail was sent.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts, evidence and issues in this decision. At the request of the

Agent, a copy of the decision and any orders issued in favor of the Landlord will be sent to them at the email address listed in the Application

Preliminary matters

In the hearing the Agent provided affirmed and undisputed testimony that the Tenant continues to occupy the rental unit and that additional rent is now outstanding for May and June. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, I amend the Application to include outstanding rent for May and June of 2020.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the Landlord entitled to monetary compensation to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on September 1, 2019, and that rent in the amount of \$950.00 is due on the first day of each month. The Agent confirmed that these are the correct terms of the tenancy agreement and stated that the Tenant has not paid rent for March, April, May or June of 2020, and currently owes \$3,800.00 in outstanding rent. In support of this testimony the Agent pointed to two invoices for outstanding rent.

The Agent stated that when the Tenant did not pay the rent as required on March 1, 2019, the 10 Day Notice was personally served on March 3, 2020, a copy of which is in the documentary evidence before me for review.

The 10 Day Notice in the documentary evidence before me indicates that on

March 1, 2020, the Tenant failed to pay rent in the amount of \$950.00 as required. The 10 Day Notice has an effective vacancy date of March 13, 2020, and indicates that it was served personally on the Tenant on March 3, 2020. The 10 Day Notice states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

The Agent submitted into the documentary evidence before me, a witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service") which indicates that the 10 Day Notice was personally served on the Tenant on March 3, 2020, in the manner described above.

As a result of the above, the Agent sought a Monetary Order for \$3,800.00 in outstanding rent, \$100.00 for recovery of the filing fee, and an Order of Possession for the rental unit as soon as possible.

Neither the Tenant nor an agent acting on their behalf appeared at the hearing to provide any evidence or testimony for my consideration.

Analysis

Section 26 (1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

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.

However, section 46(4) and 46(5) of the *Act* also state:

46 (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 have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was personally served with the 10 Day Notice on March 3, 2020. I also find that the Tenant was obligated to pay the monthly rent of \$950.00, on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant failed to pay the rent owed according to the 10 Day Notice within the five days granted under section 46(4) of the *Act* and there is no evidence before me that the Tenant disputed the 10 Day 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 10 Day Notice, March 13, 2020, and the Landlord is therefore entitled to an Order of Possession.

I also find that the Tenant owes \$3,800.00 in outstanding rent for March, April, May, and June of 2020. As the effective date of the 10 Day Notice has passed, and the Tenant currently owes four months of outstanding rent, the Order of Possession will be effective two (2) days after service on the Tenant.

Pursuant to section 72 of the *Act*, the Landlord is also entitled to recovery of the \$100.00 filing fee. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$3,900.00; \$3,800.00 for rent owed as of the date of the hearing, plus \$100.00 for the recovery of the filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two (2) days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$3,900.00**. 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: June 2, 2020

Residential Tenancy Branch