



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

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

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”); and
- Recovery of unpaid rent; and
- Authorization to withhold the Tenant’s security deposit towards outstanding rent owed.

The hearing was convened by telephone conference call and was attended by the owner of the named corporation listed as the Landlord in the Application (the “Landlord”), and two agents for the Landlord (the “agents”), all of whom provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlord and Agents were 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 no one attended the hearing on behalf of the Tenant, I confirmed service of these documents on the Tenant as explained below.

The Landlord and Agents testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and the documentary evidence before me from the Landlord, was sent to the Tenant by registered mail at the rental unit address on April 27, 2020. The Agents provided me with the registered mail tracking number and the Canada Post website confirms that the registered mail was sent as described above and delivered to a community mailbox on April 29, 2020. As the registered mail was delivered to a community mailbox as a result of the current state of emergency, and not personally delivered, I therefore find that the Tenant was deemed served with the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and the

documentary evidence before me from the Landlord, on April 2, 2020, in accordance with sections 90 (a) and (d) of the *Act*.

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 Landlord, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in Application.

Preliminary Matters

Rule 4.2 of the Rules of Procedure states that in circumstances that can reasonably be anticipated, the Application may be amended at the hearing. During the hearing the Landlord and Agents sought to amend the Application to include recovery of the \$100.00 filing fee and additional rent owed since the Application was filed. The Application was amended accordingly to include recovery of the \$100.00 filing fee and additional outstanding rent.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to the recovery of unpaid rent pursuant to sections 26 and 67 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The tenancy agreement and the addendum to the tenancy agreement in the documentary evidence before me states that the fixed-term tenancy began on September 1, 2019, and that the tenancy is to continue on a month to month basis after the end of the fixed-term on February 28, 2020. The tenancy agreement and the addendum to the tenancy agreement states that rent in the amount of \$720.00 is due on the first day of each month, that a security deposit in the amount of \$360.00 was paid, and that Landlord will charge late and returned cheque fees, as applicable, each month that rent is late or cheques are returned in the amount of \$25.00 each. During the

hearing the Landlord and Agents confirmed that these are the correct terms of the tenancy agreement.

The Landlord stated that when the Tenant failed to pay rent on time and in full as required under the tenancy agreement, the 10 Day Notice was personally served by them on the Tenant in the presence of the agent B.M. B.M. was present in the hearing, and confirmed service of the 10 Day Notice on the Tenant by the Landlord in the manner described above.

The 10 Day Notice in the documentary evidence before me is signed by Landlord and dated March 19, 2020, has an effective date of March 30, 2020, and states that as of March 1, 2020, the Tenant owed \$2,160.00 in outstanding rent. The 10 Day Notice was also in writing on the RTB form (#RTB-30) and contained the same address for the rental unit as the address on the tenancy agreement.

The Landlord and Agents stated that to their knowledge the Tenant has not sought to cancel the 10 Day Notice with the Residential Tenancy Branch (the "Branch") and that no rent has been paid since the 10 Day Notice was served. The Landlord and Agents stated that the Tenant currently owes \$4,320.00 in outstanding rent, \$150.00 in late fees, and \$150.00 in returned cheque fees, for a total of \$4,620.00.

No one appeared on behalf of the Tenant to provide 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. Based on the affirmed and uncontested testimony of the Landlord and Agents and the documentary evidence before me, I am satisfied that the Tenant owed rent in the amount of \$720.00 on the first day of each month. I am also satisfied that as of March 1, 2020, the Tenant owed \$2,160.00 in outstanding rent as stated on the 10 Day Notice.

I also accept the undisputed and affirmed testimony of the Landlord and Agents that the Tenant was personally served with the 10 Day Notice on March 19, 2020. As there is no evidence before me that the Tenant had a right to deduct or withhold rent under the *Act*, or that they either paid the amounts shown on the 10 Day Notice or disputed the 10 day

Notice by filing an Application with the Branch within the required time periods set out in section 46 (4) of the *Act*, I therefore find that the Tenant was conclusively presumed under section 46 (5) of the *Act* to have accepted that the tenancy is ending in accordance with the 10 Day Notice and was required to vacate the rental unit by March 30, 2020. Based on the above and as I am satisfied that the 10 Day Notice complies with section 52 of the *Act*, the Landlord is therefore entitled to an Order of Possession for the rental unit pursuant to section 55 (2)(a) of the *Act*. As the effective date of the 10 Day Notice, March 30, 2020, has passed, I therefore find that the Landlord is entitled to an Order of Possession effective two (2) days after service on the Tenant.

Based on the uncontested and affirmed testimony of the Landlord and Agents and the documentary evidence before me, I am satisfied that the Tenant owes \$4,620.00 in outstanding rent, late fees, and cancelled cheque fees. Pursuant to section 72 of the *Act*, I also grant the Landlord recovery of the \$100.00 filing fee and authorization to withhold the Tenant's security deposit in partial repayment of the amounts owed.

Based on the above, and pursuant to section 67 of the *Act*, the Landlord is therefore entitled to a Monetary order in the amount of \$4,360.00; \$4,720.00, less the \$360.00 security deposit retained.

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 **\$4,360.00**. 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 17, 2020