



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Newport Property Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

In this dispute, the landlord seeks an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Residential Tenancy Act* (the “Act”). In addition, the landlord seeks compensation for unpaid rent in the amount of \$6,504.00 pursuant to sections 26 and 67 of the Act, and, recovery of the filing fee pursuant to section 72 of the Act.

An application for dispute resolution was made on May 11, 2020 and a dispute resolution hearing was convened, by way of teleconference, on June 12, 2020. The landlord’s agent (hereafter the “landlord”) attended the hearing and was given a full opportunity to be heard, present testimony, make submissions, and call witnesses; the tenant did not attend.

The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceeding package by way of email on May 18, 2020 and included in evidence were copies of the email correspondence; the tenant responded to the landlord’s emails. Based on the undisputed testimony and supporting evidence, I find that the tenant was served with the Notice of Dispute Resolution Proceeding package in accordance with section 89(2)(e) of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to compensation for unpaid rent?
3. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

Under the terms of the written tenancy agreement, the monthly rent, which is due on the first of the month, was \$1,585.00, and was \$1,626.00 effective March 1, 2020. A notice of rent increase was issued on November 20, 2019. The tenant paid a security deposit of \$775.00. A copy of the written tenancy agreement was submitted into evidence.

On March 3, 2020, the landlord's agent served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") by posting it on the front door of the rental unit at 1:04 PM. A Proof of Service document was submitted into evidence, along with a copy of the Notice. The Notice indicated that rent (erroneously indicated as \$1,585.00, instead of \$1,626.00) was due on March 1, 2020, and that the tenancy would end on March 17, 2020 if rent was not paid. Rent was not paid.

As of today, the landlord testified that the tenant is in arrears for unpaid rent for March, April, May and June 2020, for a total of \$6,504.00. A copy of the tenant's account ledger was submitted into evidence, which showed the increasing balance owed.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due, and did not pay rent for March to June, 2020, inclusive. Further, there is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and, insufficient evidence indicating that he applied to cancel the Notice. Indeed, the email correspondence between the parties suggests that the tenant is simply taking advantage of the government's moratorium on the enforcement of orders of possession.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when 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.

Applying section 55 of the Act to the unchallenged testimony regarding the tenant's failure to pay rent for the last four months, and regarding the tenant's failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act I hereby grant an order of possession to the landlord. This order is effective two days after service upon the tenant. Further, I order that the tenancy ended on March 17, 2020.

I further conclude that the tenant has failed to pay rent for four months and that he now owes a total of \$6,504.00. I therefore grant the landlord a monetary award in that amount, pursuant to section 67 of the Act.

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant their claim for reimbursement of the filing fee of \$100.00, for a total monetary award of \$6,604.00.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount."

As the tenancy has ended, I order that the landlord retain the tenant's security deposit of \$775.00 in partial satisfaction of the above-noted award. The balance of the award, \$5,829.00, is granted by way of a monetary award issued with this decision.

Conclusion

The landlord's application is granted.

I hereby grant the landlord an order of possession, which may be served on the tenant and which is effective two days from the date of service. Should the tenant refuse to comply with the order of possession, the landlord may file and enforce the order in the Supreme Court of British Columbia, subject to the restrictions currently in place as per the [*Residential Tenancy \(COVID-19\) Order*](#).

I further grant the landlord a monetary order in the amount of \$5,829.00, which may be served on the tenant. Should the tenant fail to pay the landlord the amount owed, the landlord must serve a copy of the order on the tenant and may file the order in the Provincial Court of British Columbia (Small Claims Court) for enforcement and collection. The tenant will be liable for any additional costs related to the filing and enforcement of this order.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: June 12, 2020

Residential Tenancy Branch