



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR FFL

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) to obtain an order of possession for unpaid rent or utilities, and to recover the cost of the filing fee.

Two agents for the landlord JM and GS (agents) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated April 28, 2020 (Notice of Hearing), application and documentary evidence were considered. The agents testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on April 30, 2020. The registered mail tracking number has been included on the style of cause for ease of reference. The agents testified that the registered mail package was addressed to the rental unit and as far the agents are aware, the tenant continues to occupy the rental unit. According to the Canada Post online registered mail tracking website, the registered mail package was delivered on May 1, 2020. Based on the above, I find the tenant was duly served with the Notice of Hearing, application and documentary evidence on May 1, 2020. As a result, the hearing continued without the tenant present as I am satisfied on service.

Preliminary and Procedural Matter

The agents confirmed their email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

The agents also confirmed the email address for the tenant and as a result, the decision will be emailed to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2019. Monthly rent in the amount of \$1,100.00 was due on the first day of each month. The tenant paid a security deposit of \$550.00 at the start of the tenancy, which the landlord continues to hold.

The agents confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated March 9, 2020 (10 Day Notice) by posting to the tenant's door on March 9, 2020. The tenant did not dispute the 10 Day Notice and did not pay the full amount of rent owed within five days of receiving the 10 Day Notice, which is listed as \$1,100.00 due March 1, 2020 on the 10 Day Notice. The effective vacancy date is listed as March 19, 2020.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the agents during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The effective vacancy date of the 10 Day Notice is listed as March 19, 2020, which automatically corrects under section 53 of the Act to March 22, 2020. Section 90 of the Act states that documents posted to the door are deemed served 3 days after they are posted. Therefore, I find the 10 Day Notice was deemed served on March 12, 2020, which is why the effective vacancy date corrects automatically to March 22, 2020.

I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which is March 22, 2020. As the agents suspect that the tenant continues to occupy the rental unit, I grant the landlord an order of possession effective **two (2) days** after service on the tenant. I find the tenancy ended on March 22, 2020.

As the landlord's application was successful, I grant the landlord **\$100.00** for the filing fee under section 72 of the Act. I authorize the landlord pursuant to section 62(3) and 72 of the Act to retain \$100.00 from the tenant's \$550.00 security deposit in full satisfaction of the recovery of the cost of the filing fee. Pursuant to section 62(3) of the Act, I find the tenant's security balance is now \$450.00.

Due to the current State of Emergency in BC, the parties are encouraged to review *Ministerial Order M089*, which can be found at:

http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The parties are reminded to review *Ministerial Order M089* as noted above.

The landlord is authorized to retain \$100.00 for the filing fee from the tenant's security deposit. The tenant's new security deposit balance is now \$450.00, effective immediately.

This decision will be emailed to both parties.

The order of possession will be emailed to the landlord only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 5, 2020

Residential Tenancy Branch