



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 the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An Order of Possession for unpaid Rent pursuant to sections 46 and 55;
- A monetary order for rent and/or utilities and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fees from the tenant pursuant to section 72.

Both the landlord and the tenant attended the hearing. As both parties were present service of documents was confirmed. The tenant acknowledged service of the Application for Dispute Resolution Proceedings, but stated he was not provided with any of the landlord's documentary evidence. The landlord testified there was no evidence to exchange; all of the evidence provided to me was already in the tenant's possession. The tenant acknowledged having the notice to end tenancy in his possession. The only other document referred to during testimony was a proof of service document, however the tenant acknowledged being served with the notice to end tenancy.

The applicant in an Application for Dispute Resolution Proceedings is required to serve evidence at least 14 days before a hearing in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure. As the landlord did not prove service of his documentary evidence, it will not be referred to in this decision. I will only refer to the testimony of the parties. The tenant did not provide any documentary evidence for this hearing.

Preliminary Issue

The landlord testified he misspelled the tenant's name in his Application for Dispute Resolution. He asked for the name to be amended and I allowed the amendment in accordance with rules 4.2 and 6.1 of the Rules of Procedure.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Is the landlord entitled to a monetary order?

Can the landlord recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The tenancy began on September 1, 2018. Rent was set at \$2,750.00 per month payable on the first day of each month. A security deposit of \$1,375.00 was collected which the landlord continues to hold. No formal condition inspection report was done with the tenant at the commencement of the tenancy.

The landlord testified the tenant paid rent on December 1, 2019 but that is the last payment he received. The tenant pays in cash and sometimes by cheque from his father. No receipts were issued since the tenant never requested any. The tenant did not pay rent for January, February or March. The tenant also failed to pay any rent for April through August although the landlord acknowledges he couldn't seek to end the tenancy for failure to pay rent for that affected period.

On July 11, 2020, the landlord's girlfriend personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 10, 2020. The tenant acknowledges receiving it on that day. The notice, provided as evidence, states the tenant failed to pay \$8,250.00 that was due on January 1, 2020. The landlord testified that this was an error, that the notice should have stated the \$8,250.00 was due on March 1, 2020 since it covered unpaid rent for January, February and March 2020. The landlord testified the tenant has not paid any rent since last December and seeks a monetary order from January to August 2020.

The tenant gave the following testimony. The landlord failed to provide his bank statements which would have proven the tenant paid rent for January to March 2020. The tenant testified rent for January, February and March was paid, either by cash or by cheque. The record of depositing the tenant's rent payments into the landlord's bank account would be found in the landlord's bank records, which wasn't supplied as evidence by the landlord for this hearing. The landlord's failure to provide the bank records means the landlord's application must fail.

The tenant acknowledged he didn't provide any documents to support his version of events although he stated he could get them for me now or right after the hearing. I advised the tenant that he was required to exchange his documents with the landlord and provide a copy to me at least seven days prior to the hearing in accordance with the Residential Tenancy Branch Rules of Procedure. I would not accept any new evidence claimed by the tenant to be available.

After being personally served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on July 11th, the tenant didn't file an application to dispute it because he believed it was given to him during the Covid-19 state of emergency and was therefore invalid. The tenant testified that he called the Residential Tenancy Branch who advised him he didn't need to dispute the notice because it was invalid.

The tenant testified he has lost work due to Covid-19 and has not paid rent for May, June, July or August. He states he paid \$2,000.00 rent in April, however he did not provide any documentary evidence to support that testimony.

Analysis

Based on the testimony of the parties, I am satisfied the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on the tenant on July 11, 2020 in accordance with sections 88 and 90 of the Act.

The Residential Tenancy (Covid-19) Order was proclaimed by Ministerial Order M089/20 on March 30, 2020. This order was rescinded by Ministerial Order M195/20 on June 24, 2020. During the timeframe between March 30th and June 23rd, a landlord right to serve a tenant with a notice to end tenancy was suspended.

The notice in dispute was served on July 11th, after the suspension was lifted. The tenant's argument that the notice to end tenancy had to fail because it was served during the emergency response timeline is therefore invalid.

Section 46 of the Act stipulates that a tenant has five days from the date of receiving the Notice ending tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended on the effective date of the Notice. The landlord is entitled to an Order of Possession pursuant to section 46. As the effective (move-out) date stated in the notice has passed, the landlord is entitled to an Order of Possession effective 2 days after service upon the tenant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

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

Section 26(2) states a landlord must provide a tenant with a receipt for rent paid in cash.

The landlord testified that he did not provide the tenant with receipts for the rent the tenant paid in cash. This is contrary to section 26(2).

The landlord claims the tenant didn't pay rent for January through March 2020, while the tenant argues that he did. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim

has the burden to provide sufficient evidence over and above their testimony to establish their claim. Without issuing receipts, or providing any other record of payments, the landlord is not in a position to prove when rent was received or in this case, not received, as the landlord claims. I find the landlord has provided insufficient evidence to satisfy me that the tenant failed to pay rent for January, February and March 2020. I dismiss the landlord's application to recover that rent without leave to reapply.

The tenant testified he paid \$2000.00 rent for the month of April, however he provided no documentary evidence to support that testimony. This contradicts the landlord's testimony that he received no payments at all from the tenant since December. Again, without any documentary evidence from the landlord, who has the burden to prove his case on a balance of probabilities, I find the landlord has not met the criteria. I find \$2,000.00 of the \$2,750.00 rent for the month of April has been paid, meaning the landlord is entitled to compensation for lost rent in the amount of \$750.00 from the tenant pursuant to section 67 of the Act.

The tenant acknowledges he didn't pay rent for the months of May, June, July or August due to lack of work from the Covid-19 pandemic. Section 26 of the Act is clear:

a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenant did not have any right to deduct any portion of the rent and was required to pay rent for that timeframe. *Although the Residential Tenancy (Covid-19) Order* issued on March 30, 2020 suspended a landlord's right to evict tenants for not paying rent during the state of emergency, it did not suspend a tenant's obligation to pay the rent. The landlord is entitled to a monetary order for the months of May to August 2020, or 4 months. (\$2,750.00 x 4 = **\$11,000.00**).

The *Covid-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulations* made on August 14, 2020 requires landlords and tenants to enter into repayment plans for unpaid affected rent (rent due during the period of March 18 to August 17, 2020) – this regulation only applies to tenancy agreements that do not end. As I have found this tenancy ended on July 21, 2020, the parties are not required to enter into a repayment plan for the affected rent. The landlord may enforce the order at the Provincial Court of British Columbia (Small Claims Court).

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The landlord is awarded an Order of Possession pursuant to section 46(5)(b) because the tenant did not file an application to dispute the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities within 5 days of being served. This Order of Possession is effective 2 days after service upon the tenant.

The landlord is awarded a monetary order in the amount of **\$11,100.00** for unpaid rent from May to August 2020 and the filing fee in accordance with section 67 of the Act.

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: August 24, 2020

Residential Tenancy Branch