



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 31 minutes. The landlord and the landlord's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed that her lawyer had permission to speak on her behalf. The landlord's mother, "witness YR," testified as a witness at this hearing and her English language interpreter assisted her. Witness YR was excluded from the outset of the hearing and the landlord's lawyer recalled her later during the hearing. The landlord and her lawyer had a full opportunity to question witness YR.

The landlord's lawyer stated that the tenant was served with the landlord's application for dispute resolution hearing package on July 17, 2020, by way of registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking report and the landlord's lawyer confirmed the tracking number verbally during the hearing. He claimed that the package was delivered on July 20, 2020. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on July 22, 2020, five days after its registered mailing.

The landlord's lawyer confirmed that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 6, 2020 ("10 Day Notice"), on the same date by way of registered mail. He said that the effective move-out date on the notice is July 23, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on July 11, 2020, five days after its registered mailing.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include August 2020 rent of \$850.00. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due.

Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and testimony of the landlord and witness YR, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's lawyer stated the following facts. This tenancy began on December 1, 2019. Monthly rent in the amount of \$850.00 is payable on the first day of each month. No security or pet damage deposits were paid by the tenant. No written tenancy

agreement was signed, as only a verbal agreement was reached. The tenant continues to reside in the rental unit, as witness YR saw him there approximately one month prior to this hearing.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord issued the 10 Day Notice for unpaid rent of \$1,700.00 due on March 1, 2020. The landlord's lawyer stated that the tenant failed to pay rent of \$850.00 for each of February and March 2020, totalling \$1,700.00. The landlord seeks a monetary order for this unpaid rent of \$1,700.00.

The landlord's lawyer said that the tenant also failed to pay rent of \$850.00 for each month from April to August 2020, totalling \$4,250.00. The landlord seeks a monetary order for this unpaid rent of \$4,250.00. The landlord's lawyer claimed that the landlord did not offer a repayment plan to the tenant for this rent because the tenancy should have ended on July 23, 2020, as per the 10 Day Notice, and the tenant was overholding the rental unit.

The landlord seeks \$400.00 for a bylaw fine. The landlord's lawyer maintained that it was from June 16, 2020, for an untidy and unsightly mess left by the tenant in front of the rental unit, including garbage and tires in front of the door. The landlord provided a copy of the bylaw notice. Witness YR claimed that she paid for the above cost and she was not reimbursed by the tenant. She maintained that she took photographs of the unsightly mess on June 18, 2020, which was left by the tenant, since no one else was living at the rental unit, except for the tenant, since April 1, 2020.

Analysis

Order of Possession

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on March 1, 2020, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on July 23, 2020, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by July 23, 2020. As this has not occurred, I

find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Rent

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,700.00 from February to March 2020. Accordingly, I find that the landlord is entitled to rental arrears of \$1,700.00 from the tenant.

I dismiss the landlord's application for unpaid rent of \$4,250.00 from April to August 2020, with leave to reapply. The tenancy was still ongoing as of the date of this hearing on August 24, 2020. The landlord was required to provide a repayment plan to the tenant for the above "affected rent," for the period between March 18 and August 17, 2020, as per Residential Tenancy Policy Guideline 52 and did not do so.

Bylaw Fine

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the landlord's claim for the \$400.00 bylaw fine, without leave to reapply. I find that the landlord failed parts 2 and 3 of the above test.

The landlord did not provide a copy of the receipt for the \$400.00 payment, claiming that it was from June 2020, but she just found the receipt during this hearing. The landlord had ample time to submit the receipt prior to this hearing on August 24, 2020. The landlord did not provide details regarding the date of payment or the method of payment used. Further, I find that the landlord failed to show that the tenant caused an unsightly or untidy mess resulting in a bylaw fine, since the items were located outside the property, and any person could have disposed of items there, regardless of whether the tenant was the only one living at the rental unit.

As the landlord was only partially successful in this application, I find that she is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. The tenant must be served with this Order as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,700.00 against the tenant for February and March 2020 rent. 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.

The landlord's application for unpaid rent of \$4,250.00 between April and August 2020, is dismissed with leave to reapply.

The landlord's application for a monetary order of \$400.00 for a bylaw fine and to recover the \$100.00 application filing fee, is dismissed without leave to reapply.

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