



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, OPL, MNRL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- 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 of the *Act*;
- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 48 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended with the agent SS ("the landlord"). The tenant attended. The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

Issue(s) to be Decided

Is the landlord entitled to the following:

- 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 of the *Act*;

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 48 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord and tenant testified the landlord agreed to rent the unit to the tenant commencing May 1, 2020 for monthly rent of \$2,600.00 payable on the first of the month. No written agreement was submitted.

The parties agreed the tenant paid the landlord a security deposit of \$1,300.00 in cash for which no receipt was issued; the security deposit is held by the landlord.

The parties disagreed on whether the tenant paid rent for the month of May 2020.

The tenancy has been the subject of an earlier arbitration, reference to which appears on the first page; the Arbitrator found that the landlord gave conflicting testimony about whether he received rent for May 2020.

Each party accused the other of illegal conduct. The landlord reported the tenant to the police for illegally occupying the unit. The tenant continued to live in the unit. The tenant accused the landlord of stealing a substantial sum of his money from the unit.

The tenant testified he paid the landlord rent in cash in the amount of \$2,600.00 at the beginning of the tenancy for rent for May 2020. The tenant submitted no receipt or evidence supporting his testimony. The tenant acknowledged he did not pay rent for the months of June, July and August 2020 and offered to pay the landlord rent for these three months providing he obtained a receipt.

The landlord denied receipt of any money from the tenant after the tenant paid the security deposit. The landlord said he has repeatedly requested rent payments from the tenant, but no rent has been paid since the tenancy started. The landlord did not submit

any receipts, ledgers, accounts, monetary worksheets, or any documentary evidence relating to financial matters between the parties.

The tenant stated that he is willing and able to pay the rent. However, he testified that he informed the landlord he refused to pay cash and demanded a receipt, as a result of which the landlord demanded the tenant vacate the unit. The tenant stated that he has repeatedly asked for the landlord's email address so he can transfer money. The tenant testified that the landlord has blocked his email and refused to allow the tenant to pay rent. All of these allegations are denied by the landlord. The tenant stated he has not attempted to pay rent by other means such as by cheque.

The landlord testified he issued a Ten-Day Notice and served it on the tenant. The tenant denied receipt. The landlord did not submit a copy of the Ten-Day Notice.

The landlord stated he issued a Two Month Notice because he wanted to occupy the unit himself. He testified he served the tenant. The tenant denied receipt. The landlord did not submit a copy of the Two Month Notice.

The landlord requested an Order of Possession pursuant to both Notices, a monetary order for 4 months' outstanding rent, and reimbursement of the filing fee.

The tenant requested a dismissal of all claims without leave to reapply.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

The hearing was contentious, and the parties were antagonistic. The landlord acknowledged he called the police to remove the tenant from the house. The tenant stated that he has threatened to call the police if the landlord comes to the unit again.

Both parties accused the other party several times of "lying"; both were reminded numerous times to stop interrupting the other. The hearing lasted 42 minutes and included considerable disputed testimony on key issues.

Order of Possession

The landlord must establish that he has served the tenant with a Ten-Day Notice and a Two Month Notice in compliance with section 52. In the face of contradictory testimony from the parties and the failure to submit a copy of the Notices, I find the landlord has failed to meet the burden of proof on a balance of probabilities that the landlord issued either Notice or served the tenant.

As I am unable to find the form and content of either Notice complies with section 52 of the *Act* or that the landlord served the tenant with the Notices, I dismiss the landlord's claims under both Notices.

Monetary Order

Section 26(2) of the *Act* stipulates a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has *not* been made. When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has ***not*** been made.

When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made.

When a tenant has previously made cash payments and has *never* been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment.

The landlord's failure to provide receipts for cash payments made during a tenancy can significantly impair the ability to prove the tenant did not pay rent.

In this case, the landlord did not submit any evidence, such as a copy of a payment ledger, to corroborate the claim that the tenant did not pay rent for May 2020.

I find that the landlord's receipt of one cash transaction at the beginning of the tenancy leads to the possibility that the tenant made a substantial subsequent payment, that is, rent for May 2020, without a receipt being issued. Without any supporting documentary

evidence, I find the landlord has not met the burden of proof that rent is owing for May 2020. As the tenant acknowledged owing rent for June, July and August 2020, I find the landlord is entitled to a monetary award for outstanding rent for these months.

Accordingly, I find the tenant is in breach of section 26 of the *Act* by not paying the amount claimed by the landlord in accordance with the tenancy agreement for those three months.

I grant the landlord a monetary award for three months rent for June, July and August 2020 and reimbursement of the filing fee as the landlord has been substantially successful in his claim, as follows:

ITEM	AMOUNT
Rent June 2020	\$2,600.00
Rent July 2020	\$2,600.00
Rent August 2020	\$2,600.00
Reimbursement filing fee	\$100.00
TOTAL AWARD	\$7,900.00

I accordingly grant the landlord a monetary award for **\$7,900.00**.

Conclusion

I grant the landlord a monetary award for **\$7,900.00**. This Order must be served on the tenant. The Order may be filed and enforced as an Order of the Courts of the Province of British Columbia.

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