



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL, OPC, OPL

Introduction

On July 21, 2020 the Landlords submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent;
- a monetary order for damage, compensation, or loss;
- an order of possession for a One Month Notice to End Tenancy for Cause;
- an order of possession for a Two Month Notice to End Tenancy for Landlord’s Use of the Property; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 11:00 A.M. on August 25, 2020 as a teleconference hearing. The Landlords appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlords and I were the only persons who had called into this teleconference.

The Landlords testified the Application and documentary evidence package was served to the Tenant in person on July 23, 2020. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on July 23, 2020. The Tenant did not submit documentary evidence in response to the Application.

The Landlords were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Landlords entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlords be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Are the Landlords entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Are the Landlords entitled to an order of possession based on a One Month Notice to End Tenancy, pursuant to Section 55 of the *Act*?
5. Are the Landlords entitled to an order of possession based on a Two Month Notice to End Tenancy for Landlord's Use of the Property, pursuant to Section 55, of the *Act*?
6. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlords testified that the tenancy began on February 15, 2020. Rent in the amount of \$1,200.00 is due to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$600.00, which the Landlords continue to hold. The Landlords stated that the Tenant continues to occupy the rental unit.

The Landlords testified the Tenant did not pay rent in the amount of \$1,200.00 when due on March 1, 2020. The Landlords stated that the Tenant paid \$1,000.00 on March 4, 2020, however, failed to pay the remaining \$200.00 owed to the Landlords. The Landlords stated that the Tenant has failed to pay rent for April, May, June, July, and August 2020. Subsequently, the Landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 8, 2020 (the "10 Day Notice") with an effective vacancy date of July 18, 2020 for the portion of outstanding rent that was due on March 1, 2020. The Landlords stated that the 10 Day Notice was served to the Tenant in by posting it to the Tenant's door on July 8, 2020.

The Landlords testified that he received that they have not received any payments from the Tenant since serving the 10 Day Notice. The Landlord stated that in addition to the \$200.00 owing for March 2020, the Tenant failed to pay rent in the amount of \$6,000.00 for April to August 2020 rent. As such, the Landlords are seeking an order of possession based on the unpaid March 2020 rent as well as a monetary order for the outstanding balance of rent in the amount of \$6,200.00. If successful, the Landlords are also seeking the return of the filing fee.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the *Act* states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the Landlord's uncontested testimony that the Landlord served the 10 Day Notice dated July 8, 2020 with an effective vacancy date of July 18, 2020 to the Tenant by posting it to the Tenant's door on July 8, 2020. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on July 11, 2020.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until July 16, 2020 to either pay the outstanding rent owed to the Landlords in full, or make an Application for dispute resolution.

I accept the Landlords' undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of March 2020 rent owing in the amount of

\$200.00, and has also failed to pay rent when due for April, May, June, July, and August 2020.

Sections 3 and 12 of the C19 Tenancy Regulation provide that a landlord must not give a tenant notice to end a tenancy in respect of **affected rent** that is unpaid under sections 44(1)(a)(ii) and 46 of the *Residential Tenancy Act* (RTA). Notices to end tenancy for affected rent may only be issued when the conditions set out in the C19 Tenancy Regulation have been met.

“Affected rent” means; rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the “specified period” between March 18, 2020 and August 17, 2020, and

In this case, I find that the unpaid rent due on March 1, 2020 does not constitute Affected rent as it predates the specified period, therefore, I find that the Landlords were permitted to issue a 10 Day Notice for Unpaid rent. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, July 21, 2020, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlords are entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlords have established an entitlement to a monetary award for unpaid rent in the amount of \$6,200.00. Having been successful, I also find the Landlords are entitled to recover the \$100.00 filing fee paid to make the Application. Further, I find it appropriate in the circumstances to order that the Landlords retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlords are entitled to a monetary order in the amount of \$5,700.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$6,200.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	-(<i>\$600.00</i>)
TOTAL:	\$5,700.00

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlords. The Landlords are granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$5,700.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 25, 2020

Residential Tenancy Branch