



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

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 section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. Both parties confirmed the landlords served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on July 21, 2020. The tenant confirmed that no documentary evidence was submitted by him. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2016 on a fixed term tenancy ending on July 31, 2017 and then thereafter as per the submitted copy of the signed tenancy agreement dated August 9, 2016. The monthly rent is \$1,150.00 payable on the 1st day of each month.

Both parties confirmed the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 30, 2020 via Canada Post Registered Mail on June 30, 2020. The 10 Day Notice states in part that the tenant failed to pay rent of \$6,900.00 for the period between October 1, 2019 and March 1, 2020 (6 months). The landlord clarified that the tenant has not paid any rent from October 1, 2019 to the date of this hearing.

The landlord seeks an order of possession and a monetary claim for unpaid rent and compensation of \$7,200.00 which consists of:

\$6,900.00	Unpaid Rent, 6 months from October 1, 2019 to March 1, 2020
\$200.00	Bylaw Fine, burning without a permit
\$100.00	Filing Fee

The tenant confirmed in his direct testimony that no rent has been paid as he was in hospital undergoing treatment for cancer, covid and is currently not working. The tenant confirmed that no rent has been paid to the landlord in an effort to have the landlord renegotiate the tenancy agreement and to pay for materials related to maintenance which the tenant is responsible for as part of the current tenancy agreement.

The landlord also clarified that part of the monetary claim is for a \$200.00 municipal bylaw fine for "burning without a permit" issued to the landlord and has submitted a copy of the notice. The tenant confirmed that he had burned items without a permit and was aware of the fine.

Analysis

Subsection 26(1) of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the
tenant has a right under this Act to deduct all or a portion of the rent.

The tenant did not provide evidence that he was entitled to withhold rent pursuant to subsection 33(3)) or as a result of a prior order from the Residential Tenancy Branch.

The tenant provided affirmed evidence that he has withheld rent to negotiate the terms of a new tenancy agreement.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord testified that the tenant failed to pay rent for the period October 1, 2019 to March 1, 2020 and has in fact continued to not pay any rent as of the date of this hearing. The tenant admits that he did not pay any of the rent as claimed by the landlord.

As the tenant has failed to pay his rent in full when due, I find that the 10 Day Notice issued June 30, 2020 is valid. The landlord is entitled to possession of the rental unit on July 15, 2020, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admitted that he has not paid any rent for the period October 1, 2019 to March 1, 2020 of \$6,900.00.

The tenant has also admitted that he was burning items without a permit as per the notice issued by the municipality which imposed a fine of \$200.00 in the name of the landlord. On this basis, I find that the landlord is entitled to this amount.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlords are granted an order of possession.

The landlords are granted a monetary order for \$7,200.00.

These orders must be served upon the tenant. Should the tenant fail to comply with this order, the order may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as orders of those Courts.

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