



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Multiple Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNRL, MNDL, FFL, OPL-4M**

Introduction

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

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent, damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their notice of application and evidence by email on June 8, 2020 to an email address routinely used by the tenant to correspond regarding tenancy matters from the landlord's email address routinely used for such matters. Based on the evidence I find that, pursuant to section 71(2) of the *Act* and the order of the Director dated March 30, 2020, the tenant is deemed served with the landlord's materials on June 11, 2020, three days after emailing.

The landlord testified that they served their amendment and additional evidence on the tenant by registered mail sent on September 8, 2020. The landlord provided valid Canada Post tracking information as evidence of service. Based on the evidence I find the tenant is deemed served with the landlord's amendment on September 13, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing the landlord testified that since the application was filed additional rent has become due and owing while some payment was received and amended the amount of their monetary claim to \$3,904.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as I find no prejudice to the party by amending the monetary claim, I lower the landlord's claim to \$3,904.00 accordingly.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in 2016. The current monthly rent is \$3,120.00 payable on the first of each month. A security deposit of \$1,500.00 was collected at the start of the tenancy and is still held by the landlord.

The landlord issued a 4 Month Notice to End Tenancy for Renovation dated July 23, 2020. The landlord submits that the notice was served on the tenants by registered mail sent on that date and provided a valid Canada Post tracking receipt as evidence of service. The landlord submits that the tenant has not filed an application to dispute the notice. The landlord submits that the reason for the tenancy to end is that they intend to perform major renovations to the plumbing and water system of the rental property which is expected to take 4 to 6 months to complete.

The landlord submits that there is a rental arrear of \$3,904.00 as at the date of the hearing arising from unpaid rent for September 2020 and earlier months. No repayment plan has been agreed upon by the parties.

The landlord further submits that the tenants have caused damage to a sink in the rental unit and they have obtained a quote of \$525.00 for repairs.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the evidence that the landlord served the 4 Month Notice on the tenant by registered mail on July 23, 2020. In accordance with sections 88 and 90 of the *Act* I find that the tenant is deemed served on July 28, 2020, five days after mailing. Pursuant to

section 49(8) a tenant may file an application to dispute a notice to end tenancy within 30 days of service. I accept the evidence that the tenant did not file an application within the 30 days provided under the Act, or at all. Accordingly, I find that the tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy will end on the effective date of the 4 Month Notice, November 30, 2020.

I find that the landlord's 4 Month Notice conforms with the form and content requirements of the Act as it provides the correct rental address, the effective date and the reason for the tenancy to end. I accept the landlord's evidence that they intend to perform renovations that are so extensive that the rental unit must be vacant. Therefore, I find that the landlord is entitled to an Order of Possession for November 30, 2020, the effective date of the 4 Month Notice, pursuant to section 55 of the *Act*.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Pursuant to section 3(2) of the COVID-19 (Residential tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (the "C19 Regulation") a landlord must give a tenant a repayment plan if there is overdue rent that became payable during the specified period between March 18, 2020 and August 17, 2020, unless a prior agreement has been entered into and has not been cancelled. Residential Tenancy Policy Guideline 52 elaborates on this by stating that, "If a tenancy has ended prior to a repayment plan being given...the arbitrator may grant a monetary order that the unpaid affected rent be paid in full as of the date of the order."

In the present case I accept the evidence of the landlords that there is no repayment plan in place between the parties. While I have issued an Order of Possession effective November 30, 2020, I am unable to find that this this tenancy has ended. Therefore, I find that it is premature to issue a monetary award in the landlord's favour for the rental arrear arising from the affected period of March 18, 2020 to August 17, 2020.

Once the tenancy has ended there is no longer an obligation upon the landlord to offer the tenants a repayment plan pursuant to the C19 Regulations. Accordingly, I dismiss this portion of the landlord's application with leave to reapply.

I am satisfied that there is a rental and utility arrear arising from the tenant's failure to make payments as required under the tenancy agreement from periods outside of the affected period. I am satisfied with the landlord's evidence that the tenant failed to pay rent in the amount of \$3,120.00 for the month of September 2020, outside of the affected period.

Accordingly, I issue a monetary award in the landlord's favour in the amount of \$3,120.00 for the unpaid rent outside of the affected period.

I find it premature to issue a monetary award for damage to the rental unit as the tenancy has not yet ended. The tenant continues to have the opportunity to remedy any damage to the rental unit prior to the end of the tenancy. I therefore, dismiss the portion of the landlord's claim seeking damages of \$525 as it is premature.

As the landlord's application was meritorious I allow the landlord to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **1:00pm on November 30, 2020**. Should the tenant or any occupant 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 \$1,720.00, allowing the landlord to recover the unpaid rent and filing fee and retain the security deposit for this tenancy. 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 balance of the landlord's application is dismissed with 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: October 1, 2020

Residential Tenancy Branch