



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR-DR-PP OPRM-DR
For the tenant: CNR LRE FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (the Act). The landlords applied for an order of possession for unpaid rent or utilities, and for a monetary order for unpaid rent or utilities with repayment plan. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 13, 2020 (10 Day Notice), for an order to suspend or set limits on the landlords' right to enter the rental unit, and to recover the cost of the filing fee.

The landlords attended the hearing. The tenant did not attend the hearing. The tenant was provided the Notice of a Dispute Resolution Proceeding dated September 14, 2020 (Notice of Hearing) after filing their application. After the 10-minute waiting period, the tenant's application was **dismissed in full, without leave to reapply**, as the tenant failed to attend the hearing to present the merits of their application.

The landlords testified that they served the tenant with the Notice of Hearing and application on October 5, 2020 by registered mail. The registered mail tracking number has been included on the Style of Cause for ease of reference. According to the Canada Post online registered mail tracking website, the landlords' package was delivered to the tenant on October 6, 2020. Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. As a result, I find the tenant was deemed served as of October 10, 2020 under the Act. As the tenant failed to attend the hearing, I find the landlords' application to be undisputed by the tenant. Pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, the hearing continued without the tenant present.

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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The landlords testified that in addition to the rent owed for a portion of March 2020 and all of September 2020 rent, the tenant has also not paid the rent for all of April, May, June, July and August of 2020, for an amount of \$6,750.00 more than their original claim. As a result, the landlords requested to amend their application to include rent owed for April to August 2020 inclusive. The landlords also stated that while they believe the tenant has vacated the rental unit, they are not completely sure. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement and that the tenant failed to attend the hearing to dispute the 10 Day Notice and their application was dismissed without leave to reapply as a result. Therefore, I allow the amendment to the application pursuant to section 64(3)(c) of the Act, from \$2,050.00 to \$8,700.00, which will be described further below.

In addition, as both parties provided their respective email addresses for their applications, this decision will be emailed to both parties.

Issues to be Decided

- Are the landlords entitled to an order of possession under the Act?
- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the fixed-term tenancy agreement was submitted in evidence. The tenancy began on September 1, 2019 and reverted to a month to month tenancy after August 31, 2020. Monthly rent in the amount of \$1,350.00 is due on the first day of each month. The tenant paid a security deposit of \$675.00 at the start of the tenancy, which the landlords continue to hold. The landlords stated that they are unsure if the tenancy

continues to occupy the rental unit so still want an order of possession in case the tenant continues to occupy the rental unit.

The 10 Day Notice submitted for my consideration by the landlords is dated September 13, 2020 and has an effective vacancy date of September 29, 2020. As the tenants did not attend the hearing and their application was dismissed without leave to reapply, I consider the 10 Day Notice to be undisputed by the tenants, which I will address further below.

Regarding the amount of rent owed or lost, the landlords testified that the tenant failed to pay the following rent:

1. March 2020 rent - \$600.00 owing
2. April 2020 rent - \$1,350.00 owing
3. May 2020 rent - \$1,350.00 owing
4. June 2020 rent - \$1,350.00 owing
5. July 2020 rent - \$1,350.00 owing
6. August 2020 rent - \$1,350.00 owing
7. September 2020 rent - \$1,350.00 owing

Based on the above, the total amount of rent owing as claimed by the landlord is \$8,700.00. The landlords are also seeking the recovery of the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – The landlords issued a 10 Day Notice dated September 13, 2020 and by not attending the hearing, I find the 10 Day Notice was not disputed by the tenants. In other words, although the tenants applied to dispute the notice, the tenant failed to attend the hearing this date, resulting in the tenant's application being dismissed in full, without leave to reapply. Section 55 of the Act applies and states:

Order of possession for the landlord

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, **the director must grant to the landlord an order of possession of the rental unit if**

(a) **the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and**

(b) **the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.**

[Emphasis added]

Given the above and considering that I find that the 10 Day Notice complies with section 52 of the Act, I must grant the landlords an order of possession. Therefore, I grant the landlords an order of possession effective **two (2) days** after service on the tenant, as the effective vacancy date of the 10 Day Notice, September 29, 2020, has passed.

Based on the above, I find the tenancy ended September 29, 2020, which was the effective vacancy date listed on the 10 Day Notice.

Landlords' claim for unpaid rent/loss of rent – I accept the landlords' undisputed testimony that the tenant owes \$8,700.00 in unpaid rent between March and September 2020 as described above. Section 26 of the Act requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. I find that the tenant breached section 26 of the Act by failing to pay the full amount of rent on the day that it is due as claimed by the landlord. Therefore, I find the landlords have met the burden of proof and is entitled to monetary compensation of **\$8,700.00** in unpaid rent as claimed.

The landlords' filing fee was waived so I do not need to consider the filing fee for the landlords further. As the tenant's claim was dismissed, I do not grant the tenant the recovery of the tenant's filing fee.

I find that the landlords have established a total monetary claim of **\$8,700.00** comprised of \$8,700.00 in unpaid rent/loss of rent. I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit of \$675.00, which the landlords continue to hold, which has accrued \$0.00 in interest to date. I **authorize** the landlords to retain the tenant's full security deposit of \$675.00 in partial satisfaction of the landlords' monetary claim, and I grant the landlord a monetary order

pursuant to section 67 of the Act for the balance owing to the landlords by the tenant in the amount of **\$8,025.00**.

Conclusion

The tenant's application has been dismissed in full, without leave to reapply.

The landlords have proven their claim and is, therefore, entitled to an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The tenancy ended on September 29, 2020.

The landlords have established a total monetary claim of \$8,700.00s. The landlords have been authorized to retain the tenant's full security deposit of \$675.00 in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the Act for the balance owing to the landlords by the tenant in the amount of \$8,025.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlords only for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 28, 2020

Residential Tenancy Branch