



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPRM-DR, OPR-DR-PP, FFL
For the tenants: CNR

Introduction

On September 3, 2020 the tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued by the landlord (the “10-Day Notice”).

On September 7, 2020 the landlord applied for an order of possession of the rental unit, and a monetary order for rent not paid. Additionally, they applied for reimbursement of the application filing fee.

The landlord’s application here was filed initially as a Direct Request. The matter proceeded by way of participatory hearing because this Direct Request application cannot be considered by that method when there is a cross-application by the tenant in place.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “*Act*”) on October 29, 2020. The landlord attended the telephone conference call hearing; the tenant did not attend.

Preliminary Matter

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with the notice of this hearing. This means the landlord must provide proof that the document was served in a verified manner allowed under section 89 of the *Act* and I must accept that evidence. In the hearing the landlord stated that they served a copy of that document via registered mail to the tenants on September 15, 2020. They provided proof of

tracking numbers – two packages, one for each tenant. These show the items were delivered on September 17, 2020.

The landlord stated in the hearing that they did not receive any information about the tenant's application. That application is crossed with that of the landlord here, concerning the same matter.

The tenant did not attend the hearing, although I left the teleconference hearing connection open until 10:00 a.m. to enable them to call in to this teleconference hearing scheduled for 9:30 a.m. I confirmed the correct call-in numbers and participant codes were provided in the Notice of Hearing generated when the tenants applied. I also confirmed throughout the duration of the call that the tenants were not in attendance.

Rule 7.3 of the Rules of Procedure provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application without leave to reapply. On this basis, I dismiss the tenants' application for cancellation of the 10-Day Notice. The tenants do not have leave to reapply on this issue.

Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which was provided as evidence. The tenancy began on January 1, 2020 for a fixed term ending on June 30, 2020. After this time period, the tenancy became a month-to-month. A clause with the agreement

states: "At the end of the fixed term. . .the tenant must vacate the rental unit. Unless otherwise agreed upon in writing 1 full calendar month (or more) prior . . ."

The rent amount was \$1,700 per month payable on the 1st of each month. The tenant paid a security deposit of \$850 on January 1, 2020. The tenants were not in attendance at this hearing to provide any information contrary to that presented by the landlord on these discrete points.

The landlord provided a copy of the 10-Day Notice, issued September 2, 2020. This document gave the move-out date of September 12, 2020. This listed the failure by the tenants to pay the rent of \$1,700 on September 1, 2020. The landlord served this document by taping it onto the front door. As provided in a 'Proof of Service' document, a witness observed this service.

A letter dated September 2, 2020 from the landlord to the tenants appears in the record. This provides that the landlord proposed a payment plan in line with rent payments during affected rent periods. This listed rent amounts owing, offset with amounts already paid. Specifically, these are:

1. June 2020: \$850 – there was a payment of half this month's rent, with the second half payable in July as per the payment plan
2. July 2020: \$1,300 – there was a payment of \$400, leaving this amount owing
3. August 2020: \$1,300 – there was a payment of \$400, leaving this amount owing
4. September 2020: \$1,700 – in the hearing the landlord stated they received nothing from the tenants for this rent amount
5. October 2020: \$1,700 – in the hearing the landlord stated they received nothing from the tenants for this rent amount.

In the hearing, the landlord stated the tenants left the unit in the middle-of the night 2 days prior to the hearing date. There was no advance notice from the tenants they were leaving at this time. The tenants did not provide a forwarding address – the landlord stated it is their own understanding that the tenants would not want to be contacted further, thereby barring further communication.

The total amount of the landlord's claim for rent amounts owing is \$6,850.00.

Analysis

From the evidence and testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of the rent payments as well as the amount the tenants paid for the security deposit. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by September 7, 2020, within the five days granted under 46(4) of the *Act*. The tenant did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 12, 2020. I find the landlord is entitled to an Order of Possession.

The *Act* section 26 outlines a tenant's duty to pay rent:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether 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.

I accept the evidence before me that the tenant failed to pay full rent for June 2020 and the months following through to October 2020. The landlord testified that they tried to get the tenant to pay over quite some time; however, the tenant did not comply.

The landlord provided detailed evidence in the form of the payment plan they proposed, as well as the details of the amounts owing that accompanied the 10-Day Notice. As presented, I find the landlord is entitled to the amount of \$6,850.00 as they claim.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$6,850.00. After setting off the security deposit amount of \$850.00, there is a balance of \$6,000.00. I am authorizing the landlord to keep the security deposit and award the balance of \$6,000.00 as compensation for rent owing.

As the landlord is successful, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

In the absence of the tenants I dismiss their application in its entirety and without leave to re-apply.

I grant an Order of Possession to the landlord effective ONE DAY after service of the Order on the tenant. Should the tenant fail to comply with the Order, it may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 and 72 of the *Act*, I grant the landlord a separate Monetary Order for the recovery of the amounts claimed and the filing fee paid for this application. This amount is \$6,100.00. The landlord is provided with this Order in the above terms and 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

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the *Act*.

Dated: October 30, 2020

Residential Tenancy Branch