



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPC, MNRL, FFL
For the tenant: CNR, LRE

Introduction

On September 15, 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.

On September 27, 2020 the tenant applied for dispute resolution for an order cancelling the One-Month Notice to End Tenancy Issued for Cause issued by the landlord (the "One-Month Notice"). Additionally, they applied for an order suspending or setting conditions on the landlord's right to enter the rental unit.

Because the tenant filed an application in the same matter, this was linked as a cross-application and the files were heard conjointly. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on October 29, 2020. One of the landlords (hereinafter the "landlord") attended the telephone conference call hearing; the tenant did not attend. An advocate for the tenant attended on their behalf.

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 they served the document 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. They provided evidence of this in the form of a Canada post registered mail receipt and tracking information label. They confirmed the date of mailing was September 16 and the date of delivery was on September 18, 2020. They provided a photo of the envelope labelled with this registered mail information.

The advocate for the tenant who attended the hearing stated they did not receive evidence material from the landlord and did not receive notice of this hearing. They did not receive this information from the tenant directly. They knew about this hearing date and time because of the tenant's own application for dispute resolution which had this reserved hearing date and time. They stated they spoke with the tenant, and the tenant stated they did not receive any papers for this hearing.

The landlord confirmed they did not receive information from the tenant about their own application for this hearing.

I find the landlord provided evidence that they served the notice of dispute resolution, together with their prepared evidence. This includes a confirmation of delivery. This was within established timelines for application as set out in policy guidelines and the rules of procedure. Additionally, the address of the tenant is that of the rental unit where they reside.

Given these factors, I find the notice of hearing and landlord evidence is deemed to have been received by the tenant on the fifth day after it was mailed. This is in line with section 90 of the *Act*. The tenant did not attend the hearing to provide evidence to the contrary; similarly, the advocate in attendance on their behalf did not state directly that service of the notice and evidence did not occur.

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 they provided as evidence. The parties signed the agreement on July 4, 2020, for the tenancy which started on that date. This was a month-to-month tenancy. The tenant was to pay \$2,800 per month rent. The tenant was also to pay \$1,400 for a security deposit and \$200 deposit for 2 key fobs.

The landlord presented at the hearing that the tenant did not pay any rent amount and did not pay the initial security deposit or fob deposit. The tenant did not attend in person to provide information contrary to that of the landlord on these points. The tenant advocate stated that the tenant contacted them to help dispute the One-Month Notice.

The landlord provided a copy of the One-Month Notice, issued August 2, 2020. This document gave the move-out date of September 3, 2020. This listed the failure by the tenant to pay the security or pet damage deposit within 30 days as required by the tenancy agreement. As provided in a 'Proof of Service' document, a witness provided that they observed the landlord place a copy to the door of the rental unit.

On page 3 of the One-Month Notice, the landlord provided that they tenant did not provide a security deposit initially because the cheque they provided for this amount was returned. The landlord contacted the tenant for the correct amount on July 9 via e-transfer; however, the tenant did not respond to this. Another promise by the tenant to pay this amount on July 10 followed; however, the tenant did not pay. The landlord provided a copy of this returned cheque.

On July 9, 2020, the landlord contacted the tenant for the first month's rent. On that same day the tenant provided a cheque for this amount; however, the cheque returned with no funds on July 13. The landlord provided a copy of this returned cheque.

The landlord provided evidence that they tried to enter the unit on August 3. They provided advance notice of this entry in the form of a written document dated July 29, 2020. A witness statement in the evidence shows the landlord attempted to enter the unit; however, the lock on the unit door was changed and their key did not work.

The tenant's advocate in the hearing advised that the tenant will vacate the rental unit on November 10, 2020. They also stated they will, on the tenant's behalf, return the keys and fob are returned to the landlord. They also stated they will make sure the tenant attends for a Condition Inspection meeting with the landlord when it is scheduled.

In the hearing, the landlord presented their claim for the following amounts of rent owing: this is \$2,800 for each month July, August, and September 2020. At the hearing, the landlord advised the tenant was still occupying the unit; therefore, they amended their claim to include the rent amount for October. This total claimed amount is \$11,200.00.

The tenant advocate in the hearing provided that they did not have a discussion with the tenant about rent amounts owing.

As the landlord is successful, I find they are entitled to recover the \$100 filing fee paid for this application.

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.

The *Act* section 47(1)(a) states that a landlord may end a tenancy where the tenant does not pay the security or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. I accept the undisputed evidence before me that the tenant failed to pay this amount owed in full.

The *Act* section 47(4) provides that a tenant may dispute a One-Month Notice by applying for dispute resolution within 10 days after the date they receive the document. Where the tenant does not apply within that timeframe, they are conclusively presumed to have accepted that the tenancy ends on the effective date in the notice.

Here, the tenant did not dispute the One-Month Notice within the 10-day statutory timeframe. As such, I find they are conclusively presumed under section 47(5) to have accepted that the tenancy ended on the effective date of the One-Month Notice, September 9, 2020. For this reason, I find the landlord is entitled to an Order of Possession.

The tenant will vacate the rental unit on November 10, 2020. Given this is the case and given that they did not attend or advise their advocate of the situation, their application for an order that suspends or sets conditions on the landlord's right to enter the unit is dismissed. The tenant does not have leave to reapply on this issue.

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 July 2020 and the months following through to September 2020 as per the landlord's original claim. The landlord testified that they tried to resolve this issue right away in July; however, the tenant did not comply and there was no communication from the tenant after this. This non-payment of rent extends into October 2020 with the tenant still present in the unit.

I find the landlord is entitled to an award for the amount claimed: \$11,200 for rent owing.

As the landlord is successful, I find they are entitled to recover the \$100 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective November 10, 2020. 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. The landlord shall ensure that a condition inspection meeting is scheduled with the tenant – the tenant's advocate will be helpful in this regard, along with the return of keys.

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 \$11,300.00. 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