



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BMAC Holdings and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, CNR, MNR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to sections 55, 46, 67 and 72 of the *Residential Tenancy Act*.

The landlord applied for an order of possession and for a monetary order for unpaid rent, unpaid utilities and for the recovery of the filing fee. The tenant applied to cancel the notice to end tenancy for non-payment of rent and for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by their agents. The tenant represented himself. As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and stated that he did not file any of his own. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The landlord and the property management company are both corporations. The tenant named the property management company as the landlord. At the request of the tenant both corporations have been named as landlord in the style of cause.

During the hearing the tenant stated that a new property manager came on board and there were issues with documentation of rent and utilities paid for the months of April to August 2020 which fell during the Pandemic and involved Government assistance with rent. At the request of both parties, this portion of the landlord's application for unpaid rent and unpaid utilities during the period of the Pandemic is dismissed with leave to reapply.

The tenant informed me that he is in the process of moving out but was unable to provide a forwarding address. The tenant agreed to allow the landlord to communicate with him by using the email address of the co-tenant VD.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Are the parties entitled to recover the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started on March 01, 2019 and the current monthly rent is \$2,200.00 payable on the first of the month.

The landlord stated that the tenant owed rent from April 2020 and the landlord drew up a repayment agreement as per the order dealing with unpaid rent for the period of the Pandemic. The tenant did not sign the agreement.

On September 01, 2020 the tenant failed to pay rent and on September 08, 2020, the landlord served the tenant with a notice to end tenancy for \$2,200.00 in unpaid rent. The tenant disputed the notice in a timely manner and continued to occupy the rental unit without paying rent. The landlord stated as of the date of this hearing, in addition to prior rent owed for the duration of the Pandemic, the tenant owes rent for the months of September (\$2,200.00), and October (\$2,200.00) and November (\$2,200.00). for a total amount of \$6,600.00.

The landlord has applied for an order of possession to be effective immediately and for a monetary order in the amount of \$6,600.00 plus \$100.00 for the filing fee.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

Based on the sworn testimony and documentary evidence of both parties, I find that the tenant is deemed to have received the notice to end tenancy for unpaid rent, on September 08, 2020 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired.

In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice.

Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his case, I award the landlord the recovery of the filing fee of \$100.00. Overall, the landlord has established a total claim of \$6,700.00 for unpaid rent and the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the tenant has not proven his case, he is not entitled to the recovery of the filing fee of \$100.00.

Conclusion

I grant the landlord an order of possession effective 2 days after service on the tenant and a monetary order in the amount of \$6,700.00.

The landlord's application for unpaid rent and unpaid utilities during the Pandemic 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: November 03, 2020

Residential Tenancy Branch