



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Smallwood Pacific Properties
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPRM-DR, OPR-DR, FFL
For the tenant: CNR-MT

Introduction

On September 16, 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"). They applied for more time to dispute the 10-Day Notice that the landlord issued on September 8, 2020.

On September 18, 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 November 17, 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 tenant on September 25, 2020. They provided proof of the Canada Post tracking number for the single package provided to the tenant.

The landlord stated in the hearing that the first package was delivered on September 28, 2020. The tenant returned this package to the building manager on September 29, 2020. The landlord provided a second package as more evidence became available, on October 7, 2020 via registered mail. The tracking information for this material showed the tenant never picked up the material from the post office.

The landlord stated in the hearing that they did not receive any information about the tenant's application until their Application here was processed on September 24, 2020. The tenant's 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 9:59 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 tenant applied. I also confirmed throughout the duration of the call that the tenant was 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 tenant's application for cancellation of the 10-Day Notice; I am not granting more time for them to dispute. The tenant does 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 they provided as evidence. The tenancy began on July 1, 2020 for a fixed term ending on June 30, 2021. After this time period, the tenancy would continue as month-to-month.

The rent amount was \$1,375 per month. The tenant paid a security deposit of \$637.50 on June 29, 2020. The tenant did not attend 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 8, 2020. This document gave the move-out date of September 18, 2020. This listed the failure by the tenant to pay the rent of \$1,375 on September 1, 2020. The landlord served this document in person to the tenant. As provided in a 'Proof of Service' document, a witness observed this service.

In the hearing, the landlord provided that the tenant paid the rent for September on October 5, 2020. The tenant also paid the October rent at this same time. This was two months' rent amount for \$2,760 and the landlord issued a "use and occupancy only" receipt. At the time of the hearing in November, the landlord had no communication with the tenant and the tenant did not pay the rent for the month of November 2020. The landlord provided that the tenant was still occupying the rental unit.

In the hearing on November 16, 2020, the landlord stated they are claiming for compensation of the November rent amount, \$1,375. They stated they wish to retain the security deposit to offset this rent amount owing.

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 tenant paid for the security deposit. The tenant 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 13, 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. They applied for more time to dispute the 10-Day Notice; however, they did not attend this hearing to present their case.

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 18, 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 November 2020. The tenant paid September and October rent – albeit after the date of the end of tenancy on September 18, 2020 – but leaves November rent amount owing. By Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I amend the landlord's Application for rent amount owing. I find these are circumstances that can reasonably be anticipated. I find the tenant is occupying the rental unit without agreement, past the end-of-tenancy date of September 18, 2020.

As presented, I find the landlord is entitled to the amount of \$1,375 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 \$1,375. After setting off the security deposit amount of \$687.50, there is a balance of \$687.50. I am authorizing the landlord to keep the security deposit and award the balance of \$687.50 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 tenant I dismiss their application in its entirety and without leave to re-apply.

I grant an Order of Possession to the landlord effective TWO DAYS 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 \$787.50. 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: November 19, 2020

Residential Tenancy Branch