



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: OPRM-DR, OPR-DR, FFL
 TT: CNR

Introduction

This hearing was scheduled to hear applications from both the landlord and the tenant pursuant to the Residential Tenancy Act (the “*Act*”).

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants applied for:

- cancellation of the landlord’s 10 Day Notice pursuant to section 46.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord attended and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with their application and evidence by leaving a copy with the tenant on October 16, 2020. Based on the undisputed testimony I find the tenant was duly served with the materials on that date in accordance with sections 88 and 89 of the *Act* and in any event has been sufficiently served in accordance with section 71.

At the outset of the hearing, the landlord made an application to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed additional rent has come due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent coming due is reasonably foreseeable, I amend the landlord's Application to increase the monetary claim from \$3,550.00 to \$5,000.00.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord testified that monthly rent for this periodic tenancy is \$1,450.00 payable on the first of each month. A security deposit of \$725.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay rent in full for the months of August, September, October and November. The landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent on September 2, 2020 for the failure to pay rent payable on September 1, 2020.

The landlord testified that there is a rental arrear of \$5,000.00 as at the date of the hearing.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 11:00am. 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 dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenants' entire application without leave to reapply.

Section 55 of the *Act* provides that:

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.

I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end-the unpaid rent payable on September 1, 2020.

The COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation ("C19 Tenancy Regulation"), provides that a landlord must not give a tenant notice to end a tenancy in respect of affected rent. Affected rent is defined as rent that became payable between the dates of March 18, 2020 and August 17, 2020. As the 10 Day Notice was issued for rent that became payable on September 1, 2020, the landlord was authorized to issue an effective 10 Day Notice for that unpaid rent.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The C19 Tenancy Regulation provides that a landlord must give a tenant a repayment plan if the tenant has unpaid affected rent. Therefore, I find that the portion of the landlord's application seeking a monetary award for rent that became due and owing prior to August 17, 2020 is dismissed with leave to reapply.

The balance of the monetary award is comprised of rent that became payable after the affected period. I am satisfied with the landlord's evidence that the total amount of rental arrear outside of the affected period is \$4,350.00. As such, I issue a monetary award in that amount.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's full security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$3,725.00, allowing for the unpaid rent and filing fee and authorizing the landlord to retain the security deposit. 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 *Residential Tenancy Act*.

Dated: November 2, 2020

Residential Tenancy Branch