



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL, MNRL-S

Introduction

This hearing was convened in response to an application and amended application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence (the “Hearing package”) by registered mail on September 24, 2020 and the amended application by registered mail on November 17, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Hearing Package on September 29, 2020 and the amended application on November 22, 2020. The Landlord provides the receipts for the registered mail that sets out tracking numbers and states that the tracking information indicates that the Tenant collected both the Hearing Package and the amended application.

The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy under written agreement started on November 15, 2017. Rent of \$1,600.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. The Tenant paid \$600.00 for May 2020 rent and has not paid any further rent since. On September 2, 2020 the Landlord served the Tenant with all three pages of a 10-day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door of the unit. The Notice sets out unpaid rent of \$2,180.00. This amount is for unpaid September 2020 rent and includes an amount of unpaid rent arising from the period May 1 to August 31, 2020. The Landlord had given the Tenant a repayment plan for this period on August 21, 2020 by registered mail setting out a first payment of \$580.00 due September 1, 2020. The Landlord asks that this Notice amount be amended to reflect only unpaid September 2020 rent of \$1,600.00. The Tenant has not disputed the Notice, has not paid any rent since receiving the Notice and has not moved out of the unit.

For the period May 1 to September 1, 2020 inclusive the Landlord claims unpaid rent of \$5,220.00 plus unpaid rent of \$1,600.00 for each of October, November and December 2020.

Analysis

Section 1.03(1)(d) of the COVID-19 (RESIDENTIAL TENANCY ACT AND MANUFACTURED HOME PARK TENANCY ACT) REGULATION provides that for a valid repayment plan the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant. As the repayment plan sets a first payment due for September 1, 2020 and as this is less than 30 days from the date the Landlord gave the Tenant the repayment plan, I find that the repayment plan is not in compliance with the Act and the September 2020 amount of \$580.00 should not have been included in the unpaid rent for September 2020.

Section 68(2)(b) of the Act provides that without limiting section 62 (3) *[director's authority respecting dispute resolution proceedings]*, the director may, in accordance with this Act, set aside or amend a notice given under this Act that does not comply with the Act. Given the undisputed and supported evidence of monthly rent payable, as the Tenant did not dispute the Notice or attend the dispute proceedings to give any rebuttal evidence or object to the Landlord's request that the Notice be amended, and as the Notice includes a portion of rent that may not be included on a notice to end tenancy without a valid repayment plan, I find that in the circumstances the Notice may be amended to set out only unpaid September 2020 rent of \$1,600.00.

Section 46(4) of the Act provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Section 46(5) of the Act provides that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 to which the notice relates by that date. Section 55(2)(b) of the Act provides that a landlord may request an order of possession of a rental unit by making an application for dispute resolution where a notice to end the tenancy has been given by the landlord, the tenant has not disputed

the notice by making an application for dispute resolution and the time for making that application has expired. Based on the undisputed evidence that the Landlord served the Tenant with the Notice, that the Tenant did not dispute the Notice and as the time for disputing the Notice has expired, I find that the Landlord is entitled to an order of possession. I make this order of possession effective two days after its service on the Tenant.

Based on the Landlord's undisputed evidence of unpaid rent and considering the issuance of an order of possession requiring the Tenant to move out of the unit within two days, I find that the Landlord has substantiated an entitlement to unpaid rent to December 15, 2020 of **\$9,220.00** (5,220.00 + 1600.00 + 1600.00 + 800.00). Should the Tenant remain in the unit past this date the Landlord has leave to reapply for additional rent. As the Landlord has been successful with its claims, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$9,320.00**. Deducting the security deposit plus zero interest of **\$800.00** from this entitlement leaves **\$8,520.00** owed to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 2 days after service of the Order on the Tenant. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$800.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$8,520.00**. If necessary, this order may be filed in the Small Claims 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: December 10, 2020

Residential Tenancy Branch