



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRIPLE POINT ENTERPRISES
LLC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-PP, FFL, MNRL-S, MNDCL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 21, 2020, wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities, issued on October 3, 2020 (the "Notice"), authority to retain the Tenant's security deposit and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on January 14, 2021. Only the Landlord's Agents, J.L. and V.S., called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:25 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agents and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. J.L. testified that they served the Tenant with the Notice of Hearing and the Application on October 28, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of November 2, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Agents and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

J.L. confirmed the Tenant abandoned the rental unit on or before December 28, 2020 such that an Order of Possession was no longer required.

The Landlord submitted further evidence and an updated Monetary Orders Worksheet the day prior to the hearing. These documents relate to the Landlord's claim for cleaning and repair costs, late fees as well as loss of rent for February 2021. As the documents were filed outside the time limits required by *Residential Tenancy Branch Rules of Procedure Rules 2.5 and 3.14*, I declined to consider this evidence. Further, since the hearing occurred on January 14, 2021, the Landlord's request for loss of rent for February 2021 was premature. The Landlord is at liberty to reapply for monetary compensation for cleaning and repair costs, late fees and loss of rent for February 2021.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. Should the Landlord be authorized to retain the Tenant's security deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee?

Background and Evidence

The Landlord's agents testified on the Landlord's behalf and confirmed that the following: this tenancy began May 16, 2019; monthly rent was originally \$2,595.00; and the Tenant paid a security deposit of \$1,297.50.

The Tenant prepaid a month's rent, then failed to pay rent for the months May and June 2020 such that the sum of \$3,007.98 was outstanding for May and June. The Landlord issued a Repayment Plan to the Tenant providing that the outstanding amount was to be paid back at a rate of \$300.79 per month from October 2020 to July 2021.

The Tenant failed to pay the October rent and failed to pay the amounts pursuant to the Repayment Plan. As a result, the Landlord issued the Notice indicating the sum of \$2,895.79 was outstanding. The Notice was served by registered mail on October 3, 2020. J.L. testified that the Tenant failed to pay the outstanding amount and failed to apply to dispute the Notice.

J.L. further testified that the Tenant failed to pay rent for November and December 2020. The Landlord discovered the Tenant had abandoned the rental unit some time prior to December 28, 2020.

Analysis

After consideration of the Landlord's undisputed testimony and evidence and on a balance of probabilities I find as follows.

Pursuant to the residential tenancy agreement I find the Tenant was obligated to pay monthly rent of \$2,595.00.

I accept the Landlord's evidence that the Tenant fell into arrears of his rental payments such that he owed the sum of \$3,007.98 for May and June 2020. The Landlord issued a repayment plan which afforded the Tenant a reasonable amount of time to repay these amounts.

I also accept the Landlord's evidence that the Tenant failed to pay anything towards the repayment plan and then failed to pay rent for October, November and December 2020 such that at the time the tenancy ended, the sum of \$10,792.98 was outstanding for rent.

Section 26 of the *Act* provides that a tenant must pay rent when rent is due. In this case I find the Tenant breached the tenancy agreement and section 26 by failing to pay rent. I therefore find the Landlord is entitled to the sum of **\$10,792.98** for unpaid rent.

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. Rule 4.2 of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated, such as when a Tenant vacates a rental unit so close to the end of a month it is not possible for the Landlord to re-rent the unit. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

I find the Tenant would have reasonably anticipated the Landlord would seek compensation for loss of rent for January 2021, as the Tenant was still in occupation of the rental unit until December 28, 2020. Accordingly, I amend the Landlord's Application to include a claim for loss of rent for January 2021. I accept the Landlord's Representatives' testimony that they could not re-rent the unit for January 2021, and I find this amount to be recoverable from the Tenant. I therefore award the Landlord the sum of **\$2,595.00** for loss of rent for January 2021.

As the Landlord has been successful in this application, I award the Landlord recovery of the **\$100.00** filing fee for a total award of **\$13,387.98**.

Pursuant to sections 38 and 72 of the *Act* I authorize the Landlord to retain the Tenant's security deposit of \$1,297.50 towards the amount awarded and I grant the Landlord a Monetary Order in the amount of **\$12,090.48**. This Order must be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

Conclusion

The Landlord's request for an order of Possession is dismissed without leave as the Tenant has already vacated the rental unit.

The Landlord is granted monetary compensation for unpaid rent for May, June, October, November and December as well as loss of rent for January 2021.

The Landlord is also awarded recovery of the filing fee.

The Landlord is authorized to retain the Tenant's security deposit towards the amounts awarded, and is granted a Monetary Order for the **\$12,090.48** balance due.

The Landlord's claim for cleaning and repair costs as well as loss of rent for February 2021 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: January 19, 2021

Residential Tenancy Branch