



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR, MNRL, FFL**

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An Order of Possession for unpaid Rent pursuant to sections 46 and 55;
- A monetary order for rent pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing which commenced at 11:00 a.m. and concluded at 11:23 p.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by property manager, DB ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he served the tenant with the Notice of Dispute Resolution Proceedings package at the tenant's residence by registered mail on November 4, 2020. The tracking number for the mailing is recorded on the cover page of this decision. I deem the tenant served with the Notice of Dispute Resolution Proceedings package five days after it was mailed, pursuant to sections 89 and 90 of the *Act*, on November 9, 2020.

This hearing was conducted in the absence of the tenant pursuant to Rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

Rule 4 of the *Rules of Procedure* allows for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served. Section 64(3) allows the director to amend an application or permit an application to be amended. The landlord sought to amend his application for a monetary order to include unpaid rent for the three months subsequent to serving the notice to end tenancy. I determined the tenant could reasonably anticipate this amendment and I allowed the landlord to amend his application to include rent for the months of November, December and January.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed evidence. The tenant once owned the rental unit but became a tenant in July 2018 when the building was converted from strata title to a single owner of the building. Since July of 2018, the tenant has paid to the landlord monthly rent of \$1175.00 per month on the first day of each month.

The landlord testified that the tenant began to miss payments beginning on March 1, 2020. Between March 30 and August 17th, the landlord was prevented from serving the tenant with a notice to end tenancy for unpaid rent or utilities. On September 1, 2020, the tenant failed to pay his monthly rent in the amount of \$1,175.00. On October 1, 2020, the tenant also failed to pay his monthly rent in the amount of \$1,175.00.

On October 8th, the landlord served the tenant with two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities by registered mail. The two mailings are recorded on the cover page of this decision. The first notice to end tenancy indicates the tenant failed to pay rent of \$1,175.00 due on September 1, 2020. The second notice to end tenancy indicates the tenant failed to pay rent of \$1,175.00 due on October 1, 2020. Both notices are dated October 8, 2020 and provide an effective (move-out) date of October 23, 2020.

The landlord testified that the tenant has not made any payment towards rent since February 2020. The landlord has not been served with any Notices of Dispute Resolution Proceedings to dispute the notice to end tenancy.

Analysis

I deem the tenant served with the two notices to end tenancy on October 13, 2020, five days after they were sent to him by registered mail, pursuant to sections 88 and 90 of the *Act*.

Sections 46(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - a) pay the overdue rent, in which case the notice has no effect, or
 - b) dispute the notice by making an application for dispute resolution.
- (5) 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
 - a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord's testimony and the Notice before me, I find that the tenant was served with an effective Notice and did not file an application to dispute it within the 5 days. Therefore, the tenant is conclusively presumed to have accepted the tenancy ended on October 23, 2020, the effective date of the Notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective two (2) days after service, pursuant to section 55 of the *Act*.

Section 26 of the *Act* is clear, a tenant must pay rent when it is due under the tenancy agreement, whether or not 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. Based on the undisputed testimony of the landlord, I do not find the tenant had any right to deduct any portion of the rent. The tenant failed to pay rent as stated in the notices to end tenancy for the months of September and October in the amounts of \$1,175.00 per month. I award the landlord **\$2,350.00** for the arrears in unpaid rent for September and October 2020.

As the tenant continues to occupy the rental unit after the tenancy ended, the tenant is considered to be an overholding tenant as defined by section 57 of the *Act*. Section 57(3) states a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. I am satisfied the landlord is entitled to an additional ($\$1,175.00 \times 3 = \$3,525.00$) **\$3,525.00** for the months of November, December and January while the tenant continued to occupy the unit after the tenancy ended as an overholding tenant.

As the landlord's application was successful, the landlord is also entitled to recovery of the **\$100.00** filing fee for the cost of this application.

Item	Amount
September and October rent	\$2,350.00
November – January rent	\$3,525.00
Filing fee	\$100.00
Total	\$5,975.00

Conclusion

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

I issue a monetary order in the landlord's favour in the amount of **\$5,975.00**.

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