



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

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

Introduction

The landlord applies for an order of possession and for a monetary order under sections 55 and 67 of the *Residential Tenancy Act* ("Act"), along with a claim to recover the cost of the application filing fee under section 72 of the Act.

The landlord attended the hearing on January 29, 2021, which was held by teleconference; the tenant did not attend. One of the landlord's agent testified that they served the Notice of Dispute Resolution Proceeding package on the tenant by way of Canada Post registered mail. Based on this undisputed evidence I find that the tenant was served in accordance with the Act and the *Rules of Procedure*.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?
3. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on January 1, 2018 and monthly rent, which is due on the first of the month, is \$882.00. A security deposit of \$400.00 was paid by the tenant.

The landlord has served two 10 Day Notices to End Tenancy for unpaid rent. The tenant failed to pay in accordance with a Rent Repayment Plan that had been properly put into place. The tenant has not paid any rent from October 2020 to January 2021, inclusive. He has incurred rent arrears in the amount of \$4,000.00, which includes monthly late rent fees. There is not evidence before me indicating that the tenant applied to dispute either of the two notices to end tenancy.

Submitted into evidence by the landlords were a copy of the written tenancy agreement, the two 10 Day Notices to End Tenancy for Unpaid Rent, a direct request worksheet, proofs of service of the two notices, the rent repayment plan, a copy of a rent increase document, and, a copy of an NSF cheque.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Compensation for Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the two 10 Day Notice to End Tenancy for Unpaid Rent informed the tenant that the notices would be cancelled if he paid rent within five days of service. The notices also explained that the tenant had five days from the date of service to dispute the notices by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submission, that the tenant has not paid rent for October, November, and December 2020 and has not paid rent for January 2021. He has therefore incurred rent arrears along with late charges. There is no evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and, no evidence indicating that they applied to cancel the notices.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$4,000.00.

Claim for Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlord was successful, I grant their claim for the \$100.00 filing fee.

Summary of Monetary Award, Retention of Security Deposit, and Monetary Order

A total award of \$4,100.00 is granted. Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As such, I order that the landlord may, after the tenant vacates the rental unit, retain the tenant’s \$400.00 security deposit in partial satisfaction of the above-noted award.

The balance of the award, \$3,700.00, is granted by way of a monetary order that is issued in conjunction with this Decision, to the landlord.

Application for Order of Possession

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

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

In addition, section 55(4) of the Act states that

In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, the tenant did not dispute the notices to end the tenancy. Therefore, pursuant to section 55(4)(a) of the Act, I grant the landlord an order of possession. This order of possession is issued in conjunction with this Decision to the landlord. The landlord must serve the order of possession on the tenant in order for it to be effective.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant, and the order is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlord a monetary order of \$3,700.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia (Small Claims Court).

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: January 29, 2021

Residential Tenancy Branch