



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ra-An Enterprises
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

This hearing, reconvened from an ex parte Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

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 corporate landlord was represented by their agent (the "landlord") who 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 the notice of reconvened hearing and materials by registered mail sent on November 12, 2020. The landlord submitted a valid Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on November 17, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed the tenant has failed to make any of the scheduled payments against the Repayment Plan and there is a total rental arrear of \$2,000.00 as at the date of the hearing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlords' monetary claim from \$1,000.00 to \$2,000.00 as the additional amount of arrears could be reasonably anticipated.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as sought?

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

Background and Evidence

This periodic tenancy began in 2016. The monthly rent is \$500.00 payable on the last day of the previous month. A security deposit of \$250.00 was collected and is still held by the landlord. The landlord noted that there is a typographic error in the written tenancy agreement and that the correct rental address is the address noted on the present application and all other documents.

The tenant failed to pay rent for the months of July and August 2020. There was a rental arrear of \$1,000.00 for which the landlord issued a Repayment Plan dated October 1, 2020 in accordance with section 3(2) of the COVID-19 (Residential tenancy Act and Manufactured Home Park Tenancy Act) (No. 2) Regulation (the "C19 Regulation"). The tenant failed to make any of the installment payments against the repayment plan.

The tenant also failed to pay rent for the months of September and October 2020. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated October 1, 2020 indicating a rental arrear for the unaffected months of \$1,000.00. The 10 Day Notice was served on the tenant by registered mail. The landlord submitted a valid Canada Post tracking receipt as evidence of service. The tenant failed to make any payment of the arrears nor did they file an application to dispute the notice.

The landlord submits that the total arrear for this tenancy as of January 29, 2021, the date of the hearing is \$2,000.00.

Analysis

I find that there was an enforceable tenancy agreement between the parties wherein the tenants were obligated to pay the monthly rent in the amount of \$500.00. I accept that there was an arrear of \$1,000.00 as at October 1, 2020, the date of the 10 Day Notice.

I find that the tenant is deemed served with the 10 Day Notice on October 6, 2020, five days after mailing, in accordance with sections 88 and 90 of the Act. Pursuant to section 46(4) the tenant had five days from the date of deemed service to either pay the arrear in full or file an application to dispute the Notice. I accept the landlord's evidence that the tenants failed to pay the full rent due or dispute the 10 Day Notice within that five day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, October 16, 2020. Therefore, I issue an Order of Possession in the landlord's favour.

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.

I accept the evidence of the landlord that the tenant has failed to pay rent for the unaffected months in the amount of \$1,000.00 and that there was a valid Repayment Plan issued against which the tenant failed to make any of the installment payments. I find that there is a total arrear of \$2,000.00 as at the date of the hearing and issue a monetary award in that amount accordingly.

As the landlord was successful in their application they are entitled to recover their 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

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant 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 \$1,850.00, allowing the landlord to recover the unpaid rent and filing fee and retain the security deposit for this tenancy. 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: January 29, 2021

Residential Tenancy Branch