



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL, OPN, OFL, MNDL, OL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”) to enforce a 10-Day Notice for Unpaid Rent (the Notice) issued on October 2, 2020, for a monetary order for unpaid rent, for an order to enforce the Tenant’s Notice to end the tenancy, for an order of possession as the rental unit appears uninhabitable, for a monetary order for damages, and to recover the filing fee for his application. The matter was set for a conference call.

The Landlord and two support persons (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been sent to the Tenant by registered mail on October 27, 2020. Section 90 of the Act determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant had been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters- Related Issues

I have reviewed the Landlord's application, and I note that they have applied to enforce a notice to end tenancy as well as for several other issues. I find that some of these other issues are not related to the Landlord's request to enforce the Notice. As one of these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Landlord's claims to request a for an order to enforce the Tenant's Notice to end the tenancy, for an order of possession as the rental unit appears uninhabitable, and for a monetary order for damages.

I will proceed with this hearing on the Landlord's claim to enforce the 10-Day Notice to end tenancy, for a monetary order for unpaid rent and to recover the filing fee paid for their application.

Issue to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 46 and 55 of the *Act*?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

The Landlord testified that this tenancy began approximately eight years ago, for a monthly rent of \$900.00 per month. The Landlord testified that no security deposit was collected for this tenancy and not tenancy agreement was signed between these parties.

The Landlord testified that they served the Tenant with the 10-Day Notice to end tenancy for Unpaid Rent, by posting the notice to the front door of the rental property

and by sending the document by Canada Post registered mail, on October 2, 2020, listing an effective date of October 17, 2020. The 10-Day Notice listed an unpaid rent amount of \$2,700.00. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had not paid the outstanding rent as indicated on the Notice or disputed the Notice within five days; the Landlord requested an order of possession to enforce their Notice.

The Landlord testified that as of the date of this hearing there is \$11,700.00 in rent outstanding for this tenancy; consisting of \$900.00 for January 2020, \$900.00 for February 2020, \$900.00 for March 2020, \$900.00 for April 2020, \$900.00 for May 2020, \$900.00 for June 2020, \$900.00 for July 2020, \$900.00 for August 2020, \$900.00 for September 2020, \$900.00 for October 2020, \$900.00 for November 2020, \$900.00 December 2020 and \$900.00 for January 2021. The Landlord requested a monetary order for the outstanding rent for this tenancy.

The Landlord testified that they did not list all of the rent outstanding for this tenancy on the 10-day Notice as they did not include the COVID-19 effected rent on the Notice.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

I accept the undisputed testimony of the Landlord that the Tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice and that they have not moved out of the rental unit, in accordance with the Notice. Therefore, I find that the Tenant has not paid the rent or disputed the Notice, within the legislated timeline and are conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the Act states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an order of possession, effective **two days** after service on the Tenant. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

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Additionally, I accept the Landlord's testimony that the Tenant has not paid the rent for this tenancy for thirteen months, between January 2020 through January 2021. I find that the Landlord has established an entitlement to a monetary award for the outstanding rent due for this tenancy from January 2020 through January 2021, in the amount of \$11,700.00.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find the Landlord is entitled to recover the \$100.00 filing fee for this application.

I grant the Landlord a **Monetary Order** in the amount of **\$11,800.00**; consisting of \$11,700.00 in outstanding rent, and \$100.00 in the recovery of the Landlord's filing fee.

Conclusion

I find that the Tenant did not dispute the Notice and is therefore presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

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

I grant the Landlord a **Monetary Order** in the amount of **\$11,800.00**. The Landlord is provided with this Order in the above terms, and 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 12, 2021

Residential Tenancy Branch