



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

On October 20, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent based on the Notice pursuant to Section 46 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On January 14, 2020, the Landlord amended the Application seeking to increase the amount of monetary compensation pursuant to Section 67 of the *Act*.

M.C. attended the hearing as an agent for the Landlord; however, the Tenant did not make an appearance at any point during the 20-minute teleconference. All parties in attendance provided a solemn affirmation.

M.C. advised that a Notice of Hearing and evidence package was served to the Tenant by registered mail on November 19, 2020 (the registered mail tracking number is noted on the first page of this Decision). The registered mail tracking history indicated that the Tenant did not retrieve this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing and evidence package five days after it was mailed. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

He also advised that the Amendment package was served to the Tenant by hand on January 14, 2021. Based on this undisputed evidence, I am satisfied that the Tenant was served the Landlord’s Amendment.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

M.C. advised that the tenancy started on May 1, 2017, that rent was established at an amount of \$1,200.00 per month, and that it was due on the first day of each month. A security deposit of \$600.00 was also paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

He advised that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid rent on October 6, 2020 by hand. The Notice indicated that \$2,400.00 was due on October 1, 2020. The effective end date of the tenancy was noted on the Notice as October 16, 2020.

He submitted that the Tenant did not pay September or October 2020 rent at all, nor has the Tenant paid any rent since service of this Notice. As the Tenant has not paid rent since September 2020 or disputed the Notice, the Landlord is seeking an Order of Possession. In addition, the Landlord is seeking a Monetary Order in the amount of **\$6,000.00** for the rental arrears of September, October, November, and December 2020, and January 2021.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

The undisputed evidence before me is that the Tenant was served the Notice on October 6, 2020. According to Section 46(4) of the *Act*, the Tenant had 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant received the Notice on October 6, 2020, he must have paid the rent in full by October 11, 2020 or disputed the Notice by Tuesday October 13, 2020 at the latest. However, there is no evidence to support that the Tenant paid the full amount of rent by October 11, 2020 or that he disputed the Notice by October 13, 2020.

Based on the undisputed evidence before me, I am satisfied that the Tenant did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenant did not pay the rent in full and as he had no authority to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized his tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenant.

I also grant the Landlord a monetary award in the amount of **\$6,000.00** for the outstanding rental arrears.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, the Landlord may retain the security deposit to apply towards these debts.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

| Item | Amount |
|-----------------------------------|-------------------|
| Rental arrears for September 2020 | \$1,200.00 |
| Rental arrears for October 2020 | \$1,200.00 |
| Rental arrears for November 2020 | \$1,200.00 |
| Rental arrears for December 2020 | \$1,200.00 |
| Rental arrears for January 2021 | \$1,200.00 |
| Filing Fee | \$100.00 |
| Security deposit | -\$600.00 |
| Total Monetary Award | \$5,500.00 |

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days** after service of this Order on the Tenant. 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$5,500.00** 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 27, 2021

Residential Tenancy Branch