



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR FFL MNRL OPR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing with his agent, AS, and both were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, his agent, and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the tenant did not attend this hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that on December 2, 2020, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenant by way of registered mail. The landlord included the tracking information and receipt for the package in their evidentiary materials. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant deemed served with copies of the landlord's application and evidence on December 7, 2020, 5 days after mailing.

The landlord provided undisputed testimony that the tenant was served with the 10 Day Notice dated on November 2, 2020 by way of posting the 10 Day Notice on the tenant's door on November 2, 2020. In accordance with sections 88 and 90 of the *Act*, I find that the tenant deemed served with the 10 Day Notice on November 5, 2020, 3 days after posting.

Although the landlord had applied for a monetary Order of \$22,000.00 in their initial claim, since they applied another \$3,500.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$22,000.00 to \$25,500.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified to the following facts. This tenancy began on August 1, 2019, with monthly rent set at \$2,000.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$1,000.00, which they still hold.

The landlord served the tenant with a 10 Day Notice on November 20, 2020 for failing to pay the outstanding rent. The landlord submitted in evidence a summary of the outstanding rent for the period of October 2019 through to February 2021. The landlord testified that from October 2019 through to January 2021, the tenant has only made \$6,500.00 in payment towards the outstanding rent, which was paid by electronic transfer and a \$500.00 rent subsidy for the months of May 2020 through to July 2020. The landlord testified that they did receive a cheque for an additional \$6,500.00, dated December 28, 2019, but that cheque remains uncashed as the tenant had informed them to hold the cheque until they had sufficient funds. The landlord testified that the tenant continued to face financial difficulty paying the monthly rent, and the cheque was never cashed.

The landlord is seeking an Order of Possession, as well as a Monetary Order for the outstanding rent for this tenancy.

Analysis

Section 55(1) of the *Act* reads as follows:

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.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected, effective date of the 10 Day Notice, November 15, 2020. As the tenant has not moved

out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant or any occupants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

The landlord provided undisputed evidence in the hearing that the tenant failed to pay the \$25,500.00 in outstanding rent for the period of October 2019 through to January 2021. As the hearing date was scheduled for February 1, 2021, and as the tenant has until the end of the day to pay the February 2021 rent, the application by the landlord to recover the February 2021 rent is dismissed with leave to reapply. Although the landlord holds a cheque for \$6,500.00, I am unable to confirm that this cheque is still valid or that the tenant has sufficient funds as this cheque is over 12 months old. Accordingly, I issue the landlord a monetary order in the amount of \$25,500.00 for the unpaid rent for the period of October 2019 through to January 2021.

As the landlord was successful with their application, I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit in the amount of \$1,000.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlords effective **two (2) days after service on the tenant**. Should the tenant or anyone 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.

In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim. I issue a \$24,600.00 Monetary Order in favour of the landlord for the unpaid rent for the period of October 2019 through to January 2021, plus recovery of the filing fee.

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.

The landlord's monetary claim for the unpaid rent for February 2021 is dismissed with leave to reapply.

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: February 1, 2021

Residential Tenancy Branch