



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on May 1, 2018. Rent of \$1,250.00 was initially payable and was subsequently reduced to \$1,200.00 per month. The rent is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit. The Tenant failed to pay rent for September 2020 and the Landlord gave the Tenant a 10-day notice to end tenancy for unpaid rent (the “Notice”) by registered mail on September 9, 2020.

The Tenant did not pay the rent set out on the Notice and did not dispute the Notice. The Tenant has not paid a total of \$12,100.00 in rent for the period April 1, 2020 to January 30, 2021, inclusive.

The Tenant states that it has today moved out of the unit. The Landlord states that it is not aware of the Tenant having moved out. The Landlord claims \$12,100.00 in unpaid rent.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full 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 neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55(2) of the Act provides that where 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, a landlord may request an order of possession. Based on the agreed facts I find that the Landlord gave the Tenant the Notice and the Tenant did not dispute the Notice or pay the rent set out on the Notice. For these reasons I find that the Tenant is conclusively presumed to have accepted the end of the tenancy. As there is no agreement on whether the Tenant has already moved out of the unit, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given the agreed facts that the Tenant has failed to pay rent of **\$12,100.00** for the period April 1, 2020 to January 30, 2021 inclusive I find that the Landlord is entitled to that amount.

As the Landlord's claims have been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$12,200.00**. Deducting the security deposit of **\$625.00** plus zero interest from this entitlement leaves **\$11,575.00** owed by the Tenant to the Landlord.

Conclusion

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

I Order the Landlord to retain the security deposit plus interest of \$625.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$11,575.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: February 02, 2021

Residential Tenancy Branch