



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPR, FFL**

Introduction

This hearing 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 landlord attended and 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 application and evidence by registered mail on November 22, 2020. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on November 27, 2020, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord indicated that since the application was filed additional rent has come due and requested to amend the amount of their monetary claim. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due could reasonably be anticipated I amend the landlord's Application to increase the landlords' monetary claim to \$4,400.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This fixed-term tenancy began on October 1, 2020. Monthly rent is \$2,200.00 payable on the first of each month. A security deposit of \$1,100.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay the full rent on November 1, 2020 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2020. The landlord served the tenant with the notice by posting on the rental unit door on November 3, 2020. The landlord submitted a signed Proof of Service form as evidence in support of service.

The landlord testified that the tenant did not file an application to dispute the notice nor did they pay the full amount of the rent within 5 days of the date of service. The landlord submits that the tenant did pay rent in the amount of \$4,400.00 on December 9, 2020 which the landlord indicated was accepted for use and occupancy only and did not reinstate the tenancy.

The landlord submits that the tenant failed to pay rent for the months of January and February 2021 and that the total arrear as of the date of the hearing is \$4,400.00.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$2,200.00 pursuant to the signed tenancy agreement. I accept the evidence before me that the tenant failed to pay the full rent on November 1, 2020 and there was a basis for the landlord to issue a 10 Day Notice. In accordance with sections 88 and 90 of the Act I find that the tenant is deemed served with the 10 Day Notice on November 6, 2020, three days after posting.

I accept the landlord's evidence that the tenant did not pay the full amount of rent due within the 5 days of service granted under section 46(4) of the *Act* nor November 16, 2020. I accept the landlord's evidence that any subsequent payments were clearly indicated to the tenant to be for use and occupancy and did not reinstate the tenancy. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$4,400.00. I issue a monetary award for unpaid rent owing of \$4,400.00 as at February 5, 2021, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$1,100.00 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 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.

I issue a monetary order in the landlord's favour in the amount of \$3,400.00 which allows the landlords to recover unpaid rent and the filing fee for their application and retain the security deposit. 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: February 5, 2021

Residential Tenancy Branch