



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 dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act (the “Act”) for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for permission to retain the security deposit, and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord and the Landlord’s Agent (the “Landlord”) attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that the documents were served on the Tenant by Canada Post registered mail, sent on December 3, 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 his 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.

Issues to be Decided

- Is the landlord entitled to an Order of Possession, pursuant to section 46 of the *Act*?
- Is the landlord entitled to monetary compensation for unpaid rent and utilities?

- Is the Landlord entitled to retain the security deposit?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on October 1, 2019, as a month to month tenancy. It was recorded on the Tenancy agreement that the rent in the amount of \$1,250.00 was to be paid on the first day of each month. The Landlord testified that they are holding a \$450.00 security deposit for this tenancy.

The Landlord testified that they served the Tenant a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on November 1, 2020. The Notice informed the Tenant of the right to dispute the Notice within 5 days after receiving it. The Landlord testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice. The Landlord submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant had not paid rent for October, November, December 2020, January 2021 and February 2021, in the amount of \$5,800.00.

The Landlord testified that they are requesting an Order of Possession to enforce their Notice and for a Monetary Order for the outstanding rent.

Analysis

Based on the above, the testimony and evidence, 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 is 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.

Section 55(2) of the *Act* states that a landlord may request an order of possession if a notice to end 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.

I also accept the undisputed testimony of the Landlord that the Tenant has not paid the outstanding rent as indicated on the Notice for October and November 2020, or for the subsequent months of December 2020, January 2021 and February 2021, for this tenancy. I find that the Landlord has proven their entitlement to a monetary award in the amount of \$5,800.00 for the outstanding rent. I grant permission to the Landlord to retain the security deposit they are holding for this tenancy in partial satisfaction of this award.

Additionally, 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 that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Landlord a monetary order in the amount of \$5,450.00, consisting of \$5,800.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$450.00 that the Landlord is holding for this tenancy.

Conclusion

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.

I find for the Landlord under sections 67 and 72 of the Act and grant the Landlord a **Monetary Order** in the amount of **\$5,450.00**. 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: February 11, 2021

Residential Tenancy Branch