



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

On October 27, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 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 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 24-minute teleconference. All parties in attendance provided a solemn affirmation.

She advised that the Notice of Hearing package and some evidence was served to the Tenant on November 27, 2020 by placing it in his mailbox. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently served the Landlord’s Notice of Hearing package and some evidence.

She stated that she served an additional evidence package to the Tenant on January 24, 2021 in person. Based on this undisputed evidence, I am satisfied that the Tenant has been sufficiently served the Landlord’s evidence. As such, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

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.

The Landlord advised that the tenancy started on July 1, 2018, that rent was established at an amount of \$2,200.00 per month, and that it was due on the first day of each month. A security deposit of \$1,100.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that the Notice was served to the Tenant by posting it to his door on October 7, 2020, and a signed proof of service form was submitted to confirm this. The Notice indicated that \$790.00 was owing for rent and it was due on October 1, 2020. The effective end date of the tenancy was noted as October 17, 2020.

She stated that the Tenant did not pay April 2020 rent at all due to the pandemic, so she agreed to allow the Tenant's security deposit to be applied to partial rent payment for this month. From May to August 2020, the Tenant paid \$500.00 towards the rent for each of these months. On August 23, 2020, she served the Tenant by hand with a Repayment Plan form outlining the outstanding rental arrears of **\$7,900.00** for the rent owing from April to August 2020. This repayment plan indicated that as of October 1, 2020, an additional \$790.00 would be owed on the first of each month for the next ten months, to make up for the rental arrears owed during the provincial State of Emergency.

She advised that apart from the rental arrears owing due to the repayment plan, the Tenant has paid the rent in full of \$2,200.00 per month for October 2020 to February 2021. As such, the Landlord is seeking an Order of Possession and a Monetary Order for the rental arrears owing under the repayment plan.

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 or Utilities. 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.

The undisputed evidence before me is that the Tenant did not pay the rent in full between the months of April to August 2020. Due to the COVID-19 pandemic, a provincial State of Emergency was declared, and rent was not required to be paid during those months. Rent owing for these months was termed "affected rent".

The provincial government enacted the C19 Tenancy Regulation which required that repayment of the affected rent be set out under the following terms:

- 1) The repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
- 2) The payment of the unpaid affected rent must be in equal installments;
- 3) Each installment must be paid on the same date that rent is due under the tenancy agreement; and
- 4) The date of the first installment must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.

The undisputed evidence is that the Landlord served the Tenant with the repayment plan on August 23, 2020 indicating that as of October 1, 2020, rent in the amount of \$790.00 would be owed on the first of each month for the next ten months, in addition to the monthly rent, to make up for the rental arrears accrued over the affected rent time period. Moreover, while the Tenant has paid the amount of rent owing each month from October 1, 2020 as per the tenancy agreement, the Tenant has not paid the rental arrears pursuant to the repayment plan. As a result, the Landlord was permitted to serve the Notice for this unpaid affected rent.

Given that the Notice was posted to the Tenant's door on October 7, 2020, he was deemed to have received the Notice on October 10, 2020. According to Section 46(4) of the *Act*, the Tenant has 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 was deemed to have received the Notice on October 10, 2020, he must have paid the affected rent payment in full or disputed the Notice by October 15, 2020 at the latest. However, the undisputed evidence is that the Tenant did not pay the first installment of the repayment plan, that he did not have a valid reason or authority under the *Act* for withholding it, and that he did not dispute the Notice. Based on the consistent 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 affected 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.

With respect to the Landlord's request for a Monetary Order for the unpaid affected rent, Section 89(1) of the *Act* required that the Notice of Hearing package be served in one of the following ways for me to also consider granting a monetary award:

- (a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

As the Landlord served the Notice of Hearing package by placing it in the Tenant's mailbox, contrary to Section 89, the Landlord's request for a monetary award for the unpaid affected rent is dismissed with leave to reapply.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. As the Landlord authorized the Tenant to use the security deposit towards April 2020 rent, pursuant to Section 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
Filing Fee	\$100.00
Total Monetary Award	\$100.00

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 **\$100.00** 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: February 11, 2021

Residential Tenancy Branch