



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-PP, MNRL-S, FFL

Introduction

The landlord seeks an order of possession and a monetary order for unpaid rent, pursuant to sections 55 and 67 of the *Residential Tenancy Act* ("Act"). The landlord also seeks to recover the cost of the filing fee under section 72 of the Act.

An agent and an assistant for the landlord, and an agent for the tenant, attended the hearing on March 15, 2021. No issues of service were raised by the parties.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on August 15, 2016 and monthly rent is currently \$3,200.00. Rent is due on the first day of the month. The tenant paid a security deposit of \$1,600.00. On or about December 8, 2020 the landlord served a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant. The Notice indicated that arrears of \$4,300.00 had not been paid when they were due on December 1, 2020. A copy of the Notice was submitted into evidence, along with a rent repayment plan, a proof of service of the Notice, a monetary order worksheet, and, various copies of registered mail receipts and documentation.

The landlord's agent (the "landlord") testified that the tenant has caught up with overdue rent and that as of today's date arrears are at zero. The landlord further testified that they want to continue the landlord-tenant relationship with the tenant but that the tenant has been late paying rent. The landlord seeks an order of possession for "accountability" but said that they do not intend to execute it; this would involve obtaining a writ of possession from the court and the hiring of bailiffs.

The tenant did not dispute the landlord's claims, and explained that due to the variable, rather unpredictable nature of their income (the tenant is a general contractor) that paying rent on time in full has proven to be difficult.

The parties then spent a few minutes discussing the issues going forward and their intentions to fulfil obligations under the tenancy agreement.

Analysis

Section 26 of the Act states that

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.

Section 46(1) of the Act states that

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.

And, a notice must comply with section 52 of the Act. (Form and content of the notice.)

Section 46(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution. In this dispute, the tenant has done neither.

Sections 55(2) and 55(2)(b) of the Act state that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .] (b)

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;

Further, section 55(4) of the Act states that

In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this dispute, the landlord's evidence persuades me to find that the tenant had not paid rent as required by the tenancy agreement and the rent repayment plan. In addition, having reviewed the Notice, I find that the Notice complies with section 52 of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenant had not paid rent in accordance with the tenancy agreement and the Act. Further, having carefully reviewed the Notice I find that the Notice complies with section 52 of the Act.

Therefore, pursuant to section 55(4) of the Act I grant the landlord an order of possession of the rental unit. It is at the discretion of the landlord's agent whether they wish to enforce the order. A copy of this order is issued in conjunction with this decision, to the landlord's agent.

As the tenant does not currently owe rent arrears, I do not grant a monetary order.

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the landlord was successful in respect of the order of possession aspect of their claim, I grant their claim for the \$100.00 filing fee. Pursuant to section 72(2)(b) of the Act, then, I authorize the landlord to deduct \$100.00 from the tenant's security deposit to pay for the cost of the application.

However, as an alternative, and if the parties agree on this option, the landlord may instead accept a payment from the tenant in the amount of \$100.00 and choose not to deduct any amount from the tenant's security deposit.

Conclusion

I grant the landlord's application, in respect of the claim for an order of possession.

I grant the landlord an order of possession, which, upon the landlord's intention to take further action, must be served on the tenant and is effective five (5) days from the date of service. If necessary, this order may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: March 15, 2021

Residential Tenancy Branch