



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNY KEN DEVELOPMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 19 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the secretary and property manager for the landlord company named in this application and that she had permission to speak on its behalf.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on February 10, 2021, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on February 15, 2021, five days after its registered mailing.

The landlord stated that she personally served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 4, 2020 ("10 Day Notice"), on the same date. The landlord confirmed that the effective move-out date on the notice is December 10, 2020. In accordance with section 88 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on December 4, 2020.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to correct the spelling of the tenant's middle name and to correct the rental unit address. The landlord requested both amendments during the hearing. I find no prejudice to the tenant in making these amendments.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include March 2021 rent of \$1,300.00. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee paid for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on November 1, 2020. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$650.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed by the tenant, although the landlord provided him with a copy that was signed by her. Only a verbal tenancy agreement was reached by the parties. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession based on the 10 Day Notice. The landlord confirmed that the 10 Day Notice was issued to the tenant for unpaid rent of \$1,300.00 due on December 1, 2020. The landlord testified that the tenant failed to pay rent of \$1,300.00 for each month from December 2020 to March 2021, totalling \$5,200.00. The landlord seeks a monetary order of \$5,200.00 for unpaid rent. The landlord seeks to retain the tenant's security deposit of \$650.00 towards the monetary order and to recover the \$100.00 filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on December 1, 2020, within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on December 14, 2020, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by December 14, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,300.00 for each month from December 2020 to March 2021, totalling \$5,200.00. Accordingly, I find that the landlord is entitled to rental arrears of \$5,200.00 from the tenant.

The landlord continues to hold the tenant's security deposit of \$650.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit of \$650.00 against the monetary order.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. The tenant must be served with this Order as soon as possible. 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 \$4,650.00 against the tenant. 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: March 16, 2021

Residential Tenancy Branch