



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Five West Hastings Holdings LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNRL-S, OPR

Introduction

On December 18, 2020 the Landlord submitted an Application for Dispute Resolution (the "Application"), seeking relief pursuant to the *Residential Tenancy Act* (the "Act") for the following:

- a monetary order for unpaid rent;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on March 16, 2021 as a teleconference hearing. The Landlord's Agent appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agent and I were the only persons who had called into this teleconference.

The Landlord's Agent testified the Application and documentary evidence package was served to the Tenant by Registered Mail on December 23, 2020. The Landlord provided a copy of the Registered Mail tracking information as well as a picture of the envelope mailed in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on December 28, 2020. The Tenant did not submit documentary evidence in response to the Application.

The Landlord's Agent was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Should the Landlord be authorized to apply the security deposit against their claim, in accordance with Section 38 and 72 of the *Act*?
3. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
4. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on May 8, 2020. Rent in the amount of \$985.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$492.50, which the Landlord continues to hold. The Landlord's Agent stated that he is unsure if the Tenant continues to occupy the rental unit.

The Landlord's Agent testified the Tenant did not pay rent in full for September, October and November 2020. The Landlord's Agent stated that the Tenant only made partial rent payments during these months, however, by December 1, 2020 the Tenant had an outstanding balance of rent owed in the amount of \$1,900.00. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 1, 2020 (the "10 Day Notice") with an effective vacancy date of December 11, 2020. The Landlord's Agent stated that the 10 Day Notice was served to the Tenant by posting it on the Tenant's door on December 1, 2020. The Landlord provided a copy of the 10 Day Notice and a Proof of Service in support.

The Landlord's Agent testified that the Tenant has paid no rent toward the outstanding balance shown on the 10 Day Notice. Furthermore, the Landlord's Agent stated that the Tenant has failed to pay rent when due for December 2020, January, February and March 2021. The Landlord is seeking a monetary order in the amount of \$3,960.00 for unpaid rent from September 2020 to March 2021. The Landlord is also seeking an order

of possession based on the unpaid rent. If successful, the Landlord is seeking to retain the Tenant's security deposit toward the monetary claim.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's Agent's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states 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.

I find based on the Landlord's Agent's uncontested testimony that the Landlord served the 10 Day Notice dated December 1, 2020 with an effective vacancy date of December 11, 2020 to the Tenant by posting it to the Tenant's door. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on December 4, 2020.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until December 9, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$1,900.00 for September to December 2020, and has also failed to pay rent when due for December 2020 to March 2021. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the

tenancy ended on the corrected effective date of the 10 Day Notice, December 14, 2020, pursuant to section 46(5) of the *Act*.

I find that the 10 Day Notice complies with the requirements for form and content and as the corrected effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the *Act*. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$3,960.00 for unpaid rent from September 2020 to March 2021. Further, I find it appropriate in the circumstances to order that the Landlord retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$3,467.50, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$3,960.00
<i>LESS</i> security deposit:	-\$492.50
TOTAL:	\$3,467.50

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$3,467.50. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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