



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the *Residential Tenancy Act* (the “*Act*”) for an order of possession to enforce a 10-Day Notice for Unpaid Rent or Utilities (the “*Notice*”) issued on December 2, 2020, a monetary order for unpaid rent, permission to retain the security deposit, and for the return of their filing fee. The matter was set for a conference call.

The Landlord and the Landlord’s Agent (the “Landlord”) attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the *Act* states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that they served the Tenant with the Notice of Hearing documents by posting the Notice to the front door of the rental unit on December 30, 2020. Pursuant to section 90 of the *Act*, documents served in this manner are deemed received three days later. Therefore, I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her 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 a monetary order for unpaid rent?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The tenancy agreement recorded that the tenancy began on October 1, 2020, as a month-to-month tenancy. Rent in the amount of \$1,100.00 is to be paid by the first day of each month, and that the Tenant had paid a \$550.00 security deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they personally served the Tenant with the Notice to End Tenancy on December 2, 2020, with an effective date of December 12, 2020, and an outstanding rent amount of \$2,100.00. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has not paid the outstanding rent as indicated on the Notice and that they have not moved out of the rental unit as of the date of these proceedings. The Landlord also testified that the Tenant had not paid the subsequent months of rent for January, February, or March 2021.

The Landlord is seeking an order of possession and 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.

In this case, I accept the undisputed testimony of the Landlord, and I find that the Tenant received the Notice on December 2, 2020. Consequently, I find that the Tenant had until December 7, 2020, to 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.

I accept the undisputed testimony of the Landlord, that the Tenant has not paid the outstanding rent as indicated on the Notice, nor have they disputed the Notice. Therefore, pursuant to section 46(5), I find that the Tenant 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 paid the rent within the required timeline or 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.*

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenant. 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 November and December 2020, nor have they paid the rent for the subsequent months of January, February, and March 2021, for this tenancy. I find that the Landlord has proven their entitlement to a monetary award in the amount of \$5,500.00 for the outstanding rent. I grant permission to the Landlord to retain the security deposit 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 his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

I grant the Landlord a monetary order in the amount of \$4,950.00, consisting of \$5,500.00 in unpaid rent, \$100.00 for the recovery of the filing fee, less the security deposit of \$550.00 that the Landlord is holding for this tenancy.

Conclusion

I find for the Landlord pursuant to sections 46, 67 and 72 of the Act.

I grant an **Order of Possession** to the Landlord effective **two days** after service on the Tenant. The Tenants must be served with this Order. 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 grant the Landlord a **Monetary Order** in the amount of **\$4,950.00** for the outstanding rent and the recovery of the filing fee for this application, less the security deposit the Landlord holds. 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: March 15, 2021

Residential Tenancy Branch