



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Properties Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, OPL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act) on December 10, 2020, seeking:

- Recovery of unpaid rent;
- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the Agent), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the documentary evidence before me from the Landlord and the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, were sent to the Tenant at the rental unit by registered mail on December 16, 2020. The Agent provided me with the registered mail tracking number, which I have recorded on the cover page for this decision, and the Canada Post tracking website indicates that the registered mail was sent as described above and delivered to the community mailbox for the rental unit on December 18, 2020. I therefore find that the Tenant was deemed served with the documentary evidence

before me from the Landlord and the Notice of Dispute Resolution Proceeding, in compliance with the Act and the Rules of Procedure, on December 21, 2020, five days after they were sent by registered mail and 3 days after they were delivered to the community mailbox, pursuant to sections 90(a) and 90(d) of the Act.

Based on the above, and as the hearing details in the Notice of Hearing were correct, and as the Agent had no difficulty attending the hearing on time using the hearing information contained in the Notice of Hearing, the hearing therefore proceeded as scheduled despite the absence of the Tenant or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure. I also accepted the documentary evidence before me on behalf of the Landlord, for consideration.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address listed for them in the Application.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the Act?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the Act?

Is the Landlord entitled to recovery of the filing fee pursuant to section 72 of the Act?

Background and Evidence

The Agent stated that the one year fixed term tenancy commenced on July 1, 2020, and that rent in the amount of \$1,180.00 is due on the first day of each month. The Agent stated that a \$590.00 security deposit was required, and that although the security deposit payment originally bounced, the Tenant subsequently paid it, and an associated \$25 administrative fee, by certified cheque. The Agent state that the Landlord currently holds the full \$590.00 security deposit in trust, and that the Landlord is seeking authorization to withhold the security deposit towards any amounts owed by the Tenant. Further to this, the Agent stated that the tenancy agreement allows the Landlord to charge a \$25.00 administrative fee for each month in which rent is paid late, plus any

service fees charged by the Landlord's financial institution for bounced or NSF rent payments.

The Agent stated that with the exception of the first months rent, which was paid in cash, the Tenant has either failed to pay rent, or pre-authorized rent payments bounced, and that the Tenant currently owes \$9,440.00 in outstanding rent for August 2020 – March 2021, and \$110.25 in service fees (3 x \$36.75) charged by the Landlord's financial institution for bounced pre-authorized rent payments in August, September and October of 2020. The Agent stated that after October 2020, the pre-authorized payments were cancelled and therefore no further service fees were incurred.

The Agent stated that when the Tenant's pre-authorized rent payments for September, October, and November bounced, a 10 Day Notice was posted to the door of the rental unit on November 13, 2020. The Agent stated that to their knowledge, the Tenant has neither paid the outstanding rent owed according to the 10 Day Notice, nor disputed the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch (the Branch). The Agent stated that the Tenant has also not paid any rent for December 2020 – March 2021.

The 10 Day Notice in the documentary evidence before me is signed and dated November 13, 2020, has an effective date of November 26, 2020, and states that \$3,613.50 in outstanding rent was due as of November 1, 2020.

The Agent stated that although the Tenant also owed \$1,180.00 in outstanding rent for August 2020, at the time the 10 Day Notice was served, August rent was not included in the amount of outstanding rent owed on the 10 Day Notice, as it is affected rent subject to repayment plan requirements. The Agent stated that the Tenant was served with a repayment plan in accordance with the regulation, by registered mail, and that the Tenant has made no repayment plan payments as of the date of the hearing. Although a copy of the repayment plan was not submitted for my review and consideration, the Agent testified that it pertained to the \$1,180.00 in outstanding rent owed for August 2020, at an equal monthly payment amount of \$196.67, with the first payment starting February 1, 2021. The Agent stated that no repayment amounts have been paid by the Tenant.

As a result of the above, the Agent sought recovery of \$9,550.25 in unpaid rent and service fees as well as recovery of the \$100.00 filing fee. The Agent also sought retention of the \$590.00 security deposit towards any amounts owed by the Tenant to the Landlord. Finally, the Agent sought an Order of Possession for the rental unit as the

Tenant continues to occupy the rental unit, and has not paid rent since July 2020. In support of their testimony the Agent submitted a copy of the 10 Day Notice, a Monetary Order Worksheet, a rent ledger, a registered mail receipt and tracking number, and a copy of the move-in condition inspection report noting the \$590.00 security deposit. Although the Landlord submitted two copies of a four page document named as the tenancy agreement, all pages in both documents were entirely blank.

No one appeared at the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration.

Analysis

Based on the affirmed and uncontested testimony of the Agent, I am satisfied that a tenancy to which the Act applies exists, which commenced on July 1, 2020, that rent in the amount of \$1,180.00 is due on the first day of each month, and that a \$590.00 security deposit was paid by the Tenant, which the Landlord holds in trust. I am also satisfied that the Landlord was entitled to collect an administrative fee of not more than \$25.00 as well as any service fee charged by the Landlord's financial institution, for each NSF pre-authorized rent payment and/or bounced cheque.

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.

Section 46(4) of the Act states that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. 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.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90(c) of the Act, I find that the Tenant was deemed served with the 10 Day Notice in the documentary evidence before me on November 16, 2020, three days after it was posted to the door of the rental unit. As there is no evidence to the contrary, I accept the Agents testimony that the Tenant neither paid the rent owed as set out in the 10 Day Notice, not filed an Application for

Dispute Resolution with the Branch seeking to dispute the 10 Day notice, within the time period set out in section 46(4) of the Act. As a result, I find that the tenancy ended on November 26, 2020, as the Tenant was conclusively presumed, pursuant to section 46(5) of the Act, to have accepted that the tenancy was ending in accordance with the 10 Day Notice, and was therefore required to vacate the rental unit by November 26, 2020, in compliance with it. I also find that the Tenant has been overholding the rental unit since the end of the tenancy.

Section 46(2) of the Act states that a notice to end tenancy under section 46 must comply with section 52 of the Act, and for the following reasons, I find that the 10 Day Notice complies with section 52 of the Act. The 10 Day Notice is in writing, is signed and dated by the Agent, contains an effective date, and states the grounds for ending the tenancy. Although the Agent used a previous version of the form, I find that the version used still qualifies as an "approved form" pursuant to section 52(e) of the Act, as it is a previously approved version of the correct form, and contains the relevant information regarding the rights and obligations of the parties in relation to the 10 Day Notice, most specifically information for the Tenant on what happens if they do not either, pay the outstanding rent shown on the 10 Day Notice or dispute the 10 Day Notice, within 5 days after receipt. I note that the 10 Day Notice also does not contain the \$1,180.00 owed for August 2020, which is affected rent for which the Landlord would not have been entitled to serve a 10 Day Notice at that time, given the repayment plan start date stated by the Agent at the hearing.

As this effective date of the 10 Day Notice has passed, and I am satisfied that the Tenant has not paid rent since July of 2020, I therefore find that the Landlord is entitled to an Order of Possession for the rental unit effective two days after service, pursuant to section 55(2)(b) and 68(2)(a) of the Act.

As the tenancy is ended, I also find that all outstanding rent and fees are due and payable, including any affected rent owed. I therefore award the Landlord recovery of the \$9,550.25 sought for outstanding rent and fees, and authorization to withhold the \$590.00 security deposit towards the amounts owed, pursuant to section 72(2)(b) of the Act. Pursuant to section 72(1) of the Act, I also award the Landlord recovery of the \$100.00 filing fee.

Pursuant to section 67 of the Act, I therefore grant the Landlord a Monetary Order in the amount of \$9,060.25: \$9,550.25 in outstanding rent and fees, plus \$100.00 for recovery of the filing fee, less the \$590.00 security deposit retained.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia and enforced as an Order of that Court. The tenant is cautioned that costs of such enforcement are recoverable from them by the Landlord.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$9,060.25. 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 Branch under Section 9.1(1) of the Act.

Dated: April 6, 2021

Residential Tenancy Branch