



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Burnaby Lougheed Lions Housing
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, OPR-PP, FFL

Introduction

The landlord applies for an order of possession, and for a monetary order, based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to sections 55 and 67 of *Residential Tenancy Act* ("Act"). The landlord also seeks to recover the cost of the application filing fee under section 72 of Act.

Both parties attended the hearing on April 12, 2021, and there were no issues of service raised by the parties. Rules 6.10 and 6.11 of the *Rules of Procedure* were addressed.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to recover the cost of the application 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 landlord gave evidence that the tenancy began on February 1, 2018. Monthly rent, which is tied to the income of the tenant or tenants residing in the rental unit, is \$1,184.00. The tenant paid a security deposit of \$532.00.

On October 18, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The notice, a copy of which was in evidence, indicated that the tenant owed \$3,235.00 as of October 11, 2020.

There was also a copy of a payment plan and the tenant's rent ledger submitted into evidence by the landlord. The landlord testified about the various payments made and not made by the tenant.

A copy of a Proof of Service document was in evidence, and which indicated that the 10 Day Notice to End Tenancy for Unpaid Rent was served by being attached to the door of the rental unit on October 13, 2020 at 12:30 PM. The Proof of Service was signed and witnessed by a third party. I note that the tenant did not dispute that they were served with the 10 Day Notice to End Tenancy for Unpaid Rent in the manner as described by the landlord and reflected in the Proof of Service document.

The landlord testified that, as of today, the tenant owes \$6,119.00 in rent arrears.

The tenant testified as to various personal matters, including that her ex-husband left in January 2020. She testified about the difficulty of paying the rent and keeping a roof over her and her young child's head. The tenant is a hard-working single mother whose occupation is that of an LPN. The tenant also testified that they are in great debt but are nevertheless paying the rent when they can. There was some dispute as to whether the rent for August 2020 was paid or not.

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.

Sections 46(4) and (5) state the following:

- (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, the Notice was posted on the door, and is presumed to have been received by the tenant on the third day after it was posted, as per section 90(c) of the Act. Indeed, the tenant did not dispute that they were served the notice in this matter and on the date noted.

The tenant did not pay rent or make an application for dispute resolution within 5 days after receiving the notice. As such, as per section 46(5) of the Act, I find the tenant is conclusively presumed to have accepted the tenancy ended on October 28, 2020, which is the date indicated on the notice as when the tenancy would end.

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 establishing their application for an order of possession based on the undisputed 10 Day Notice to End Tenancy for Unpaid Rent.

Pursuant to [section 55\(2\)\(b\)](#) of the Act, I grant the landlord an order of possession of the rental unit.

A copy of this order is issued in conjunction to the landlord, and the order must be served on the tenant. The effective date of the order of possession will be, for reasons explained below, April 30, 2021.

It is not lost on me that the tenant (and her 5-year-old son) will likely experience difficulty in finding accommodation on short notice. For this reason, I exercise my discretion under section 55(3) of the Act and order that the tenancy is to end on Friday, April 30, 2021 at 1:00 p.m.

In respect of the landlord's claim for a monetary order, section 67 of the Act states:

Without limiting the general authority in section 62 (3) [. . .], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The landlord's documentary evidence persuades me, on a balance of probabilities, that the tenant is currently in arrears totalling \$6,119.00. As such, I award the landlord the amount claimed, pursuant to section 67 of the Act.

Last, 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 their application, I grant their claim for the \$100.00 filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if "after the end of the tenancy, the director orders that the landlord may retain the amount."

As the tenancy has not yet ended, and will not end until April 30, 2021, the landlord is required to continue holding the tenant's security deposit in trust until the tenancy ends. After which, the landlord is authorized to then keep the \$532.00 security deposit as partial satisfaction of the monetary awards given.

A monetary order in the amount of \$5,687.00 ($\$6,119.00 + \$100.00 - \$532.00 = \$5,687.00$) is issued in conjunction with this decision, to the landlord. A copy of the monetary order must be served on the tenant.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant no later than April 27, 2021, and which shall go into effect 1:00 p.m. on April 30, 2021. This order of possession may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$5,687.00, which must be served on the tenant. If the tenant fails to pay the landlord the amount owed, the landlord may file and enforce the order in the Provincial Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: April 12, 2021

Residential Tenancy Branch