



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on February 3, 2021 seeking an order of possession for the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 3, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenants did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenants with the Notice of this Dispute Resolution Proceeding. This means the landlord must provide proof that the document was served at a verified address allowed under s. 89 of the *Act*, and I must accept that evidence.

The landlord gave testimony that they used registered mail for this purpose. They included registered mail receipts in their evidence to show this, one for each of the two tenants here. By tracking numbers, they stated the mail arrived at the tenants’ address on February 16. The packages they sent contained the notice of this hearing and their prepared evidence.

Based on the submissions of the landlord, I accept they served the tenants notice of this hearing and their Application in a manner complying with s. 89(1)(c) of the *Act*, and the hearing proceeded in the tenants’ absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 46 and s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement and provided a copy in their evidence. The tenancy began on July 1, 2020, with the rent amount of \$1,850 per month. The tenants paid a security deposit of \$925 at the start of the tenancy.

The landlord applied for an Order of Possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”). They attached this to the door of the tenant on January 4, 2021.

The landlord also provided a document entitled Proof of Service. This sets out that the landlord attached the 10-Day Notice to the door of the rental unit on January 4, 2021 at 6:10 p.m. A witness signed the document to attest to the fact that they observed the landlord service this document “taped to front door in white envelope.”

The 10-Day Notice states that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, January 12, 2021.

The reason for the landlord serving the 10 Day Notice is the unpaid rent for “1-Jan-20.” This is \$1,850, the full month rent at that time.

The landlord also applied for a monetary order for \$5,550 in unpaid rent for March, April and May 2021. This is an amendment to their original Application filed. In the hearing, the landlord stated they received rent payments on January 6 and 17, for that January 2021 full rent. In February, the tenants paid the full amount by February 5th.

In the hearing, the landlord provided that the tenants are still in the rental unit. Recently, they issued receipts to the tenants, provided in the evidence. These show “for use and occupancy only”. The tenants opened no communication with the landlord about extant rent amounts owing, and to the landlord’s knowledge, they did not apply to cancel the 10-Day Notice.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. They provided the specific term of rental payment and amount. The tenants did not attend the hearing; therefore, there is no evidence before me to show otherwise.

The landlord indicated “1-Jan-20” full rent amount owing on page 2 of the 10-Day Notice. I find as fact that the landlord properly meant to scribe “1-Jan-21” – the tenancy here only started in June 2020, and no rent owing from the tenants was in place prior to the start of this tenancy.

I accept the undisputed evidence before me that the tenants failed to pay the rent owed in full by January 12, 2021. This is five days from the deemed service date of January 7, 2021 as set out in s. 90(c). The tenant did not pay rent in the five days granted under s. 46(4) of the *Act* and did not dispute the 10-Day Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 12, 2021.

The landlord provided testimony on the account in question and the accumulation of the amount. As presented, I find the amount of \$5,550 is accurate. By Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, I accept the landlord’s amendment to their Application. The tenants did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount.

The hearing itself was scheduled on May 3, 2021, and the landlord stated that the tenants were still living in the rental unit on that date. The tenant has been overholding since the effective date of the end of tenancy, January 12, 2021. For this reason, I grant the landlord the full monthly rental amounts of \$1,850 for March, April, and May.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$5,550. As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100 filing fee paid for this application.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$5,650. After setting off the security deposit, there is a balance of \$4,725. I am authorizing the landlord to keep the security deposit amount and award the balance of \$4,725 as compensation for the rent amounts and Application filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$4,725 for rent owed for March through to May 2021 and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenants must be served with **this Order** as soon as possible. Should the tenants 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 s. 9.1(1) of the *Act*.

Dated: May 3, 2021

Residential Tenancy Branch