



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL; CNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for its application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 4, 2021 ("10 Day Notice"), pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 14 minutes. The landlord's agent and the landlord's lawyer attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent confirmed that she was the property manager for the landlord company named in this application and that she had permission to speak on its behalf. The landlord's agent confirmed that the landlord's lawyer had permission to speak on behalf of the landlord company at this hearing.

At the outset of this hearing, I informed the landlord's agent and the landlord's lawyer that they were not permitted to record the hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. During the hearing, the landlord's agent and the landlord's lawyer both affirmed under oath that they were not recording, and they would not record this hearing.

The landlord's agent and landlord's lawyer confirmed that they were ready to proceed with the hearing. They did not make any adjournment or accommodation requests at this hearing.

The landlord's lawyer stated that the tenant was served with the landlord's application for dispute resolution, notice of hearing and first evidence package on February 19, 2021, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and the landlord's lawyer confirmed the tracking number verbally during the hearing. The landlord's agent said that the package was delivered to the tenant on February 24, 2021. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application, notice of hearing and first evidence package on February 24, 2021, five days after its registered mailing.

The landlord's lawyer stated that the tenant was served with the landlord's second evidence package on April 26, 2021, by way of posting to the tenant's rental unit door, where the tenant is still residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's second evidence package on April 29, 2021, three days after its posting.

The landlord's agent confirmed that the tenant was served with the landlord's 10 Day Notice on February 4, 2021, by way of posting to her rental unit door, where the tenant is still residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on February 7, 2021, three days after its posting. In her application, the tenant stated that she received the 10 Day Notice on February 4, 2021, by way of posting to her door.

Preliminary Issue - Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include March, April and May 2021 rent of \$1,850.00 for each month, totalling \$5,550.00. When the landlord filed its application on February 16, 2021, the above rent was not yet due. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing.

For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing. Further, the landlord's lawyer confirmed that the landlord sent an updated rent ledger to the tenant, including this increased rent, in its second evidence package on April 26, 2021, as noted above.

Preliminary Issue – Dismissal of Tenant's Application

The landlord's lawyer confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for its application?

Background and Evidence

The landlord's lawyer stated the following facts. This tenancy began on July 1, 2020. Monthly rent in the amount of \$1,850.00 is payable on the first day of each month. A security deposit of \$925.00 was paid by the tenant and the landlord continues to retain

this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent based on the 10 Day Notice. The landlord's lawyer confirmed that the 10 Day Notice was issued for unpaid rent of \$1,850.00 due on January 1, 2021 and \$1,850.00 due on February 1, 2021. The landlord's lawyer claimed that the tenant failed to pay rent of \$1,850.00 per month from January to May 2021, inclusive, totalling \$9,250.00. The landlord's agent confirmed that the landlord seeks a monetary order of \$9,250.00 for unpaid rent and to recover the \$100.00 filing fee paid for its application.

Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on January 1, 2021 and February 1, 2021, within five days of receiving the 10 Day Notice. The tenant filed an application to dispute the notice, pursuant to section 46(4) of the *Act*. However, the tenant did not appear at this hearing in order to provide her evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on February 17, 2021, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 17, 2021. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,850.00 per month, totalling \$9,250.00, for five months from January to May 2021. Therefore, I find that the landlord is entitled to a monetary order of \$9,250.00 in unpaid rent from the tenant.

Although this hearing occurred on May 13, 2021, I find that the landlord is entitled to one full month's rent for May 2021 of \$1,850.00. I accept the landlord's lawyer's submission that the tenant is still residing in the rental unit and rent is due on the first day of each month.

The landlord continues to hold the tenant's security deposit of \$925.00. Over the period of this tenancy, no interest is payable on the deposit. Although the landlord did not apply to retain this deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$925.00 in partial satisfaction of the monetary award.

As the landlord was successful in its application, I find that it is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. The tenant must be served with this Order as soon as possible. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I order the landlord to retain the tenant's entire security deposit of \$925.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$8,425.00 against the tenant. 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.

The tenant's entire application is dismissed without leave to reapply.

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: May 13, 2021

Residential Tenancy Branch