



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, MNRL, MNDCL, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution, notice of hearing and evidence in person on February 4, 2021 in accordance with Section 89 of the Act. The Witness was present and observed this service. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started July 1, 2020. Rent of \$800.00, or \$950.00 if a second person occupied the unit, is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. The unit was occupied by the Tenant and a second person for the period December 2020 to March 2021,

inclusive and thereafter by the Tenant alone. The Tenant failed to pay rent for December 2020 and on December 25, 2020 the Landlord served the Tenant with a 10-day notice to end the tenancy for unpaid rent (the "Notice"). The Tenant did not dispute the Notice and did not pay the unpaid rent set out on the Notice as \$950.00 due December 1, 2020. The Tenant did not pay rent when it was due for January, February, March, April and May 2021 and paid the Landlord \$800.00 towards the rental arrears on February 19, 2021. The Landlord was also paid \$375.00 toward the rental arrears from a 3rd party on May 10, 2021. The Landlord confirms that they are no other compensation claims.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full 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 neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Based on the undisputed facts that the Tenant was given the Notice, did dispute the Notice or pay the outstanding rent and has not moved out of the unit, I find that the Landlord is entitled to an order of possession effective two days after service of the order of possession on the Tenant.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence of occupancy I find that the Landlord is entitled to monthly rent of \$950.00 for the period December 2020 to March 2021, inclusive for a total of **\$3,800.00** and to monthly rent of \$800.00 for each of April and May 2021 for a total of **\$1,600.00**. Based on the undisputed evidence

of rental arrears collected to date of **\$1,175.00** leaves **\$4,225.00** owed to the Landlord as unpaid rent. As the Landlord has been successful, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$4,325.00**. Deducting the security deposit plus zero interest of **\$400.00** from this entitlement leaves **\$3,925.00** owed by the Tenant.

Conclusion

I grant an Order of Possession to the Landlord effective two day after service on the Tenant. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$3,925.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 25, 2021

Residential Tenancy Branch