



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, 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 of possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
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 (the “Package”) by registered mail on March 23, 2021 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant is deemed to have received the Package on March 28, 2021.

The Landlords were 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

There is no written tenancy agreement. The tenancy started in the summer of 2019. Rent of \$1,900.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$950.00 as a security deposit. The Tenant owed rental arrears and failed to pay full rent for March 2021. On March 5, 2021 the Landlord served the Tenant with a 10-day notice to end tenancy for unpaid rent (the "Notice"). The Tenant did not dispute the Notice and has not moved out of the unit.

The Landlord's monetary calculations provided as documentary evidence was poorly set out and confusing. The Landlord clarified the rental claim at the hearing as follows:

The Tenant owed \$100.00 in rental arrears for September and rents of \$1,233.00 for the months October to June 2021 inclusive. The Tenant paid the following amounts against the total arrears to and including June 2021:

- \$900.00 in November 2020;
- \$1,400.00 in January 2021; and
- \$200.00 in February 2021.

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. Based on undisputed evidence I find that the Landlord gave the Tenant the Notice and the Tenant did not dispute the Notice or pay the arrears. For these reasons I find that the Tenant is conclusively presumed to have accepted the end of the tenancy and must move out of the unit.

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 evidence that the Tenant has not moved out of the unit and as the Landlord made the application seeking an order of possession, I find that the Landlord has substantiated an entitlement to an order of possession effective two days after service 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 unpaid rents and rents received I find that the Landlord has substantiated unpaid rent of **\$4,998.00**. As the Landlord has been successful with its claims, I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,098.00**. Deducting the security deposit plus zero interest of **\$950.00** from the entitlement leaves **\$4,148.00** owed to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective two days after its 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 the Landlord to retain the **deposit** and interest of \$950.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$4,148.00**. 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: June 28, 2021

Residential Tenancy Branch