



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPU-DR-PP, OPUM-DR, FFL CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

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

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the 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.

As the tenant did not attend this hearing, their application is dismissed without leave to reapply.

The landlord gave sworn testimony that the tenant was served with copies of the Application for Dispute Resolution hearing package ('Application') and evidence on March 14, 2020 at 4:30 pm. In accordance with sections 88 and 89 of the *Act*, I find that the tenant duly served with copies of the landlord's application and evidence. The landlord acknowledged receipt of the tenant's application.

The landlord provided undisputed testimony that the tenant was personally served with the 10 Day Notice on February 28, 2021. In accordance with section 88 of the *Act*, I find that the tenant duly served with the 10 Day Notice.

Although the landlord had applied for a monetary Order of \$13,950.00 in their initial claim, since they applied another \$9,600.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$13,950.00 to \$23,550.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Background and Evidence

The landlords testified to the following facts. This fixed-term tenancy began on March 1 2020, and continued on a month-to-month basis after February 28, 2021. The tenant

continues to reside in the rental unit. Monthly rent is set at \$2,400.00, payable on the first day of each month. The landlord collected a security deposit in the amount of \$1,200.00, which the landlord still holds.

The landlord testified that the tenant was served with a 10 Day Notice on February 28, 2021 for failing to pay \$13,050.00 in outstanding rent, and \$800.00 in outstanding utilities. The landlord provided a copy of the utility bill as well as a written demand.

The landlord testified that since the issuance of the 10 Day Notice, the tenant has not paid any monthly rent, and now owes an additional \$9,600.00 in rent for this tenancy. The landlord is requesting an Order of Possession as well as monetary orders for the money owed.

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the ,effective date of the 10 Day Notice. As the tenant has not moved out, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

The landlord provided undisputed evidence in the hearing that the tenant failed to pay \$22,650.00 in outstanding rent for this tenancy. Therefore, I find that the landlord is entitled to a monetary order in that amount. Additionally, I am satisfied that the tenant owes \$800.00 in outstanding utilities for this tenancy. I also allow the landlord's monetary claim for the outstanding utilities.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit in the amount of \$1,200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

I dismiss the tenant's application without leave to reapply.

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. 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 allow the landlord's monetary claims for unpaid rent, unpaid utilities, and recovery of the filing fee. I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary awards. I issue a \$22,350.00 Monetary Order in favour of the landlord for the remaining money owed.

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.

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: June 11, 2021