



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing, reconvened from an *ex parte* Direct Request proceeding, dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that they served the tenant with the Interim Decision and Notice of Hearing by registered mail sent on March 20, 2021. Based on the undisputed evidence I find the tenant deemed served with the landlord's materials on March 25, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due and owing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable, I amend the landlord's application to increase their monetary claim from \$850.00 to \$3,850.00.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the Act?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the Act?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. The monthly rent for this periodic tenancy is currently \$550.00 payable on the first of each month. A security deposit of \$350.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay rent for the months of December 2020, January and February 2021 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated February 1, 2021. The 10 Day Notice was served on the tenant by posting on the rental unit door on February 3, 2021.

The landlord submits that the tenant did not dispute the 10 Day Notice nor have they paid any amount towards the rental arrear. The landlord testified that the tenant has not paid rent for the months of March, April, May and June, 2021 and the total rental arrear as of the date of the hearing is \$3,850.00.

Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice.

In the present case I accept the undisputed evidence of the landlord that the 10 Day Notice was served on the tenant by posting on the rental unit door on February 3, 2021. In accordance with section 88(g) and 90(c) I find the tenant is deemed served with the 10 Day Notice on February 6, 2021, three days after posting.

The tenant had five days from February 6, 2021 to either file an application to dispute the 10 Day Notice or pay the overdue rent in full. I accept the landlord's undisputed

testimony that the tenant did neither. Accordingly, pursuant to section 46(5) of the Act I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, February 16, 2021. I therefore issue an Order of Possession in the landlord's favour. As the effective date has passed I issue an order effective 2 days after service.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Based on the undisputed evidence I find that there is an enforceable tenancy agreement between the parties wherein the tenant is required to pay monthly rent in the amount of \$550.00 on the first of each month. I accept the undisputed evidence of the landlord that the tenant has failed to pay rent for the previous seven months and there is an arrear of \$3,850.00. Accordingly, I issue a monetary award in the landlord's favour for that amount.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant 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 issue a monetary order in the landlord's favour in the amount of \$3,600.00, allowing for the recovery of the unpaid rent and filing fee and to hold the security deposit for this tenancy. 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 22, 2021

Residential Tenancy Branch