



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LL: FFL, OPR-DR, MNR-DR
 TT: CNL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- Authorization to recover the filing fee from the tenant pursuant to section 72;
- An order of possession pursuant to section 55; and
- A monetary award for unpaid rent pursuant to section 67.

The tenant applied for:

- Cancellation of a 2 Month Notice to End Tenancy for Landlord’s Use pursuant to section 49.

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 attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with their notice of application and evidence by registered mail sent on April 14, 2021. The landlord submitted a valid

Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on April 19, 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 become due and owing. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure, as additional rent becoming due over time is reasonably foreseeable, I amend the landlord's Application to increase the landlord's monetary claim from \$720.00 to \$3,600.00.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in May 2019. Monthly rent is \$720.00 payable on the first of each month. A security deposit of \$360.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay rent as required on March 1, 2021 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2021 indicating a rental arrear of \$720.00. The 10 Day Notice was served on the tenant by posting on the rental unit door on March 2, 2021 in the presence of a witness. A signed Proof of Service form was submitted into documentary evidence. The landlord is not aware of the tenant filing an application to dispute the 10 Day Notice. The tenant has not paid any subsequent amount of rent and the rental arrear as at July 20, 2021, the date of the hearing is \$3,600.00.

Analysis

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 reapply.

The tenant did not attend this hearing which was scheduled by telephone conference call at 9:30am. The line remained open for the duration of the approximately 15 minute hearing and the only participants who called in during this time were the landlord and their witnesses. Therefore, as the tenant did not attend the hearing, I dismiss the tenant's claim in its entirety without leave to reapply.

I accept the undisputed evidence of the landlord that the tenant is required to pay monthly rent in the amount of \$720.00 on the first of each month pursuant to the signed tenancy agreement. I accept the landlord's evidence that the tenant failed to pay rent on March 1, 2021 and there was a basis for the issuance of the 10 Day Notice. I accept the evidence of the landlord that the 10 Day Notice was served by posting on the rental unit door on March 2, 2021. In accordance with sections 88 and 90 of the Act I find that the tenant is deemed served with the 10 Day Notice on March 5, 2021, three days after posting.

I accept the landlord's evidence that the tenant did not pay the full amount of rent due within the 5 days of service granted under section 46(4) of the *Act* nor did they file an application to dispute the 10 Day Notice during that time. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$3,600.00. I issue a monetary award for unpaid rent owing of \$3,600 as at July 20, 2021, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$360.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

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

I grant an Order of Possession to the landlord effective **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 issue a monetary order in the landlord's favour in the amount of \$2,980.00 which allows the landlords to recover unpaid rent and the filing fee for their application and retain the security deposit. 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: July 20, 2021

Residential Tenancy Branch