



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harbour cruises Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNR-DR, OPR-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:

- A monetary award for unpaid rent, damages and loss pursuant to section 67;
- An order of possession pursuant to section 55; 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 corporate 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 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 the Interim Decision and Notice of Hearing by registered mail sent on May 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 May 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 landlords indicated that since the application was filed additional rent has come due and the rental arrears as of the date of the

hearing is \$5,400.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlords' Application to increase the landlord's monetary claim to \$5,400.00 as the additional amount of rent arrears could be reasonably anticipated.

Issue(s) to be Decided

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 their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in November 2020. The monthly rent is \$900.00 payable on the first of each month. A security deposit of \$450.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay rent as required on April 1, 2021 and the landlord issued a 10 Day Notice to end tenancy for Unpaid Rent on April 2, 2021 indicating a rental arrear of \$900.00. The 10 Day Notice was served by posting on the rental unit door on April 2, 2021 in the presence of a witness. While the 10 Day Notice is dated April 1, 2021 the landlord clarified that it is a typographic error and the 10 Day Notice should be dated April 2, 2021.

The tenant failed to pay the rental arrear nor is the landlord aware of the tenant filing an application to dispute the notice at any time. The tenant continues to reside in the rental unit and have not paid any rent during the subsequent months. The landlord testified that the total rental arrear as of September 7, 2021, the date of the hearing is \$5,400.00.

Analysis

I accept the evidence of the landlord consisting of undisputed testimony supported in the documentary materials that there is an enforceable tenancy agreement between the parties wherein the tenant is required to pay \$900.00 on the first of each month. I accept the landlord's evidence that the tenant failed to pay rent as required on April 1, 2021.

I find that the 10 Day Notice meets the form and content requirements of section 52 of the Act as it provides the correct names of the parties, the address of the rental unit and the reason for the tenancy to end. I accept the evidence of the landlord that the 10 Day Notice was served by posting on the rental unit door on April 2, 2021 and find that the tenant is deemed served with the notice on April 5, 2021, three days after posting in accordance with sections 88 and 90 of the *Act*.

I accept the evidence of the landlord that the tenant has paid no rent and have not filed any application to dispute the 10 Day Notice. Accordingly, pursuant to section 46(5) I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the corrected effective date of the notice and issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue an Order effective 2 days after service on the tenant.

I accept the undisputed evidence of the landlord that the total rental arrear as of the date of the hearing is \$5,400.00. I therefore issue a monetary award in the landlord's favour for this amount pursuant to section 67 of the *Act*.

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.

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

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 \$5,050.00, allowing for recovery of the unpaid rent and filing fee and to retain the 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: September 7, 2021

Residential Tenancy Branch