



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on April 27, 2021 seeking an order of possession for the rental unit, to recover the money for unpaid rent, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 31, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference call hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document was served in a method allowed under s. 89(2) of the *Act*, and I must accept that evidence.

The landlord provided testimony and evidence that they used registered mail for this purpose. They included a registered mail receipt in the evidence to show they sent this on May 7, 2021. They confirmed the tenant still lives in the rental unit, and that the package containing the notice of this hearing, and the landlord’s evidence, was delivered.

Based on the submissions of the landlord, I accept they served the tenant notice of this hearing and their Application in a manner complying with s. 89(2)(b) of the *Act*, and the hearing proceeded in the tenant’s absence.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which appeared in their evidence. The tenancy began on September 1, 2020, with the rent amount of \$2,200 payable on the first of each month. The agreement shows the tenant paid \$1,180 on August 3, 2020. The landlord and the tenant signed the agreement on September 1, 2020.

The landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”). They presented that they served this to the tenant on April 21, 2021. The tenant’s daughter received this document from the landlord, they “discarded the document on the floor, refusing to accept the document, and had shut the door.” The landlord provided this description of service on the completed Proof of Service document. A witness signed the document to attest to the fact that they observed the landlord service this document by “Leaving a copy with the tenant or with an adult who apparently lives with the tenant as described in special details.”

The 10-Day Notice states that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, May 1, 2021.

The reason for the landlord serving the 10 Day Notice is accumulated unpaid rent, this was for \$5,500 due on April 1, 2021.

They also applied for a monetary order for \$3,259.69 in unpaid rent for February and March 2021. The amounts are verified through receipts they issue to the tenant: one shows \$0 paid for February; the other shows a partial amount of \$1,140.31 paid for March. In the hearing, the landlord provided that after issuing the 10-Day Notice on April 21, they received rent for the full amount of April on that same day.

The landlord amended their monetary claim prior to the hearing to account for subsequent months of rent. The tenant paid no rent in May, only \$1,800 in June, \$3,000 in July, and no rent in August 2021. The landlord deducted \$1,000 from this total for utilities, bringing the total to \$6,259.69.

Analysis

From the testimony of the landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of rental payment and amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by April 1, 2021, within the five days granted under 46(4) of the *Act*. The tenant did not dispute the 10-Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, May 1, 2021.

The landlord provided testimony and evidence on the account in question and the accumulation of the amount. As presented, I find the amount of \$6,259.69 is accurate. By Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I accept the landlord's amendment to their Application. The tenant did not attend the hearing; therefore, there is no evidence to the contrary on this exact amount owing.

The hearing itself was scheduled on August 31, 2021, and the agent of the landlord stated that the tenant was still living in the rental unit on that date. The tenant has been overholding since the effective date of the end of tenancy, May 1, 2021.

I find the landlord is entitled to an Order of Possession as well an award for the unpaid rent amount of \$6,259.69. As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Because the landlord is successful in their Application, I award the \$100 Application filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, the landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$6,359.69 for rent owed for February through to August 2021 and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and 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 s. 9.1(1) of the *Act*.

Dated: September 2, 2021

Residential Tenancy Branch