



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC SANDS + MARTELLO TOWER
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence.

The landlord was advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

The landlord stated that the tenant was served with the notice of hearing package by placing it in the tenant's mailbox on June 29, 2021. The landlord had her witness, S.M. attend and confirm in his direct testimony that he was present as a witness when the hearing package was served on June 29, 2021 by placing it into the tenant's mailbox. The landlord also stated that the tenant was served with the submitted documentary evidence by placing it in the tenant's mailbox on September 16, 2021. The landlord had her witness, S.M. attend and confirm in his direct testimony that he was present as a witness when the hearing package was served on September 16, 2021 by placing it into the tenant's mailbox. I accept the undisputed affirmed evidence of the landlord and find on a balance of probabilities that the tenant was properly served as per section 88 and

89 of the Act. Despite not attending or submitting any documentary evidence, the tenant is deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord provided undisputed affirmed evidence that the tenancy began on August 1, 2020 for a fixed term ending on July 31, 2021 as per the submitted copy of the signed tenancy agreement dated July 31, 2020. The monthly rent is \$1,725.00 payable on the 1st day of each month. A security deposit of \$862.50 was paid on July 28, 2020.

The landlord seeks an order of possession and a monetary order for unpaid rent and recovery of the filing fee. The landlord amended the monetary claim stating that since the application for dispute was filed the tenant continued to make partial rent payments causing the rental arrears to increase.

The landlord provided undisputed affirmed evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent dated December 7, 2020 by placing it in the tenant's mailbox with a witness. It states in part that the tenant failed to pay rent of \$1,725.00 that was due on December 1, 2020 and provides for an effective end of tenancy date of December 17, 2020.

The landlord stated that the tenant repeatedly promised to pay the entire rent when due, but repeatedly came up with additional excuses and failed to pay all of the rent. The landlord stated that after giving the tenant multiple opportunities to resolve the issue filed an application after approximately 6 months to end the tenancy.

The landlord stated that the tenant made partial rent payments from February 26, 2021 to September 2021 for which a receipt was issued to the tenant for "Use and Occupancy Only" on each occasion. The landlord referred to the submitted Direct Request Worksheet which provides details of the partial rent payments as well as the submitted copies of the rent receipts issued for "Use and Occupancy Only".

The landlord submitted in support of these claims copies of the 10 Day Notice dated December 7, 2020; a completed proof of service notice to end tenancy dated December 7, 2020; Direct Request Worksheet(s); rent receipts for partial payments.

The landlord stated that as of the date of this hearing the tenant continues to not pay the full rent when due and is currently in rental arrears of \$7,423.00.

The landlord stated that each and every partial rent payment received from the tenant was issued a receipt with a notation that the acceptance of the payments was for "Use and Occupancy Only".

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the 10 Day Notice dated December 7, 2020 by placing it into the tenant's mailbox with a witness. Despite not applying for dispute resolution immediately the landlord did accept partial rent payments as outlined above but had issued receipts for "Use and Occupancy Only". On this basis, I find that the landlord is entitled to an order of possession based upon the 10 Day Notice dated December 7, 2020. As the effective end of tenancy date has now passed, the tenant must comply with the order of possession within two days of being served.

As for the landlord's monetary claim request of \$7,423.00, I find based upon the landlord's undisputed affirmed evidence that the landlord has established a claim for unpaid rent as requested. Despite the landlord's original monetary claim of \$5,773.00, the landlord has provided undisputed evidence of the tenant's ongoing rental arrears since the 10 Day Notice dated December 7, 2020 was served.

The landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$7,523.00.

These Orders must be served upon the tenant. Should the tenant fail to comply with these Orders, the Orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as Orders of those Courts.

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: October 07, 2021

Residential Tenancy Branch