



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Avmatter regarding Seville Management & Leasing
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **LL: MNR-DR, OPR-DR-PP, FFL**
 TT: CNR, FFT, OLC

Introduction

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

The landlord applied for:

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

The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents, with agent NC (the “landlord”) primarily speaking.

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

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is either party entitled to recover their filing fee from the other?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy originally began on December 1, 2017. The current landlord assumed the tenancy when they purchased the property in January 2019. The current monthly rent is \$1,439.00 payable on the first of each month. A security deposit of \$675.00 was paid at the start of the tenancy and is still held by the landlord.

The tenant submits that they paid an additional \$200.00 deposit for the use of a FOB and keys. The landlord disputes any such deposits and there is no documentary evidence of such amounts being required or accepted.

The parties agree that the tenant failed to pay full rent as required under the tenancy agreement during the period from April 2020 to August 2020. The total amount of the rent payable during the affected period is \$7,345.00. The parties agree that the tenant made partial payments during that period in the total amount of \$3,937.50. The tenant provided bank statements showing the amounts paid. Based on the rent due and the amounts paid there was an arrear of \$3,407.50 as at August 19, 2020.

Pursuant to the *C19 Tenancy Regulation*, in effect at that time, the landlord served the tenant with a repayment plan indicating the total rental arrear of \$3,407.50 and requiring

payment in equal instalments of \$340.75 from October 1, 2020 onwards. A copy of the repayment plan was submitted into documentary evidence.

The landlord submits that the repayment plan was served on the tenant by registered mail sent on August 19, 2020. The landlord provided a valid Canada Post tracking receipt and tracking information showing that the materials were successfully delivered on August 20, 2020. The tenant disputes that they were ever served with the repayment plan.

The parties agree that the tenant did not make payments as required under the repayment plan and only made three payments of \$100.00 each irregularly in December 2020, May 2021 and July 2021. The tenant began paying full rent from October 2020 onwards.

The landlord issued a 10 Day Notice dated August 5, 2021 indicating the arrear of \$3,107.50. The tenant confirmed receipt of the 10 Day Notice on or about August 13, 2021 and filed their application for dispute on August 17, 2021. The tenant acknowledges that there is an arrear for this tenancy. Despite the tenant's bank statements submitted into documentary evidence confirming the amount sought by the landlord, they disagree with the amount of the arrear claimed by the landlord.

Analysis

Section 88(c) of the *Act* provides that documents, when they are to be served on a party, may be served by sending a copy by registered mail to the address at which they reside. Section 90(a) provides that documents given by mail are deemed served on the fifth day after it is mailed. Residential Tenancy Policy Guideline 12 provides that the deeming provisions are rebuttable and that the party wishing to rebut the presumption should provide clear evidence that the document was not received.

In the present case I am satisfied with the evidence of the landlord that the repayment plan was given to the tenant by registered mail sent on August 19, 2020. While the tenant submits they never received the repayment plan I find that there is a preponderance of evidence by way of the valid Canada Post tracking receipt, online tracking information and testimony of the landlord to find that the material was served in accordance with the *Act*. The tenant provided no cogent explanation of why the material was not received and their submissions are more in the nature of contradiction rather than rebuttal based on evidence.

I find that the tenant is deemed served with the repayment plan on August 24, 2021, five days after mailing in accordance with sections 88 and 90 of the Act. I find that the repayment plan conforms to the requirements of the C19 Regulations which were in place at that time. I accept the undisputed evidence of the parties that the tenant did not make payments as required under the plan.

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 the tenant confirmed receipt of the 10 Day Notice on August 13, 2021 and filed their application for dispute resolution on August 17, 2021.

When a tenant applies to dispute a notice to end tenancy the onus falls to the landlord to demonstrate on a balance of probabilities that the tenancy should end for the reason provided on the notice.

I accept the evidence of the parties that the monthly rent for there is an arrear for this tenancy in the amount of \$3,107.50. While the tenant disputed that the amount sought by the landlord is correct, their own documentary evidence supports the submissions of the landlord.

I do not find the tenant's submissions about their personal situation to be particularly relevant to the matter at hand nor do they mitigate their obligation to make full payment under the tenancy agreement, *Act* and repayment plan.

Based on the evidence I am satisfied that the landlord has met their evidentiary onus on a balance of probabilities that the tenant failed to pay the full amount of rent and repayment required nor did they pay the full arrear within 5 days of service of the 10 Day Notice.

Accordingly, I dismiss the tenant's application to cancel the 10 Day Notice and find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, I issue an Order of Possession enforceable 2 days after service on the tenant.

The tenant failed to articulate what portions of the Act, regulations or tenancy agreement they believe the landlord is breaching nor did they make any submissions on this portion of their application. As such I dismiss this portion of the tenant's application without leave to reapply.

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.

I am satisfied with the evidence of the parties that there is an arrear of \$3,107.50 as claimed. I find the tenant was obligated to pay this amount pursuant to the tenancy agreement, Act and the repayment plan. I find that they failed to make full payment as required and that there remains an arrear of \$3,107.50. 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 the 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. I find insufficient evidence to support the tenant's submission that there are additional deposits paid for this tenancy.

Conclusion

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

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. 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 \$2,532.50. 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: November 26, 2021

Residential Tenancy Branch