



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Jack Of All Trades Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice dated September 3, 2021. The Landlord also seeks a monetary order of \$8,100.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, and two agents for the Landlord, M.A. and S.P. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party, and to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

We reviewed the Parties' service of the Notice of Hearing documents and evidence to the RTB and to each other. The Tenant said he had received the Application and the documentary evidence from the Landlord that had been nailed to the rental unit door on November 23, 2021. The Tenant acknowledged that he had not served the Landlord with the documents that he uploaded to the RTB. As such, I advised that I could not consider the Tenant's evidence, pursuant to Rules 3.15 and 3.16, and the rules of administrative fairness, generally.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in their Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on November 1, 2018 and ran to October 31, 2019, and then operated on a periodic or month-to-month basis. They agreed that the tenancy agreement requires the Tenant to pay the Landlord a monthly rent of \$2,700.00, due on the first day of each month. They agreed that the Tenant paid the Landlord a security deposit of \$1,350.00, and no pet damage deposit.

The Agents submitted a copy of the 10 Day Notice, and confirmed the following details of it in the hearing. The 10 Day Notice was signed and dated September 3, 2021, it has the rental unit address, it was served via registered mail, and by leaving a copy in the mail box or slot, and by attaching a copy to the door on September 3, 2021. The 10 Day Notice has an effective vacancy date of September 13, 2021, which is automatically corrected by the Act to be September 16, 2021. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord \$8,100.00 in rent that the Tenant owed the Landlord as of September 1, 2021.

In the hearing, I asked the Agents about the Tenant's statement that he had provided them with 12 post-dated cheques for the monthly rent for 2021. The Agents said:

Yes, but they bounced. It has cost more for every bounced cheque. I think the

banks charges \$25.00 for each bounced cheque. That's why the amounts have the extra \$100.00 for the bounced cheques. He did offer to write more cheques, but it would have cost us more to process, because it would have bounced.

The Tenant responded to the Agents' testimony, as follows:

I was doing good with the rent, and then I asked [S.P.] to wait a month to cash the cheque. I went two months and noticed my account balance, and wondered why the rent is not out of the bank yet. And I have to keep watching, because I have no idea when they're going to cash it.

I asked Steve to hold off on the rent and he did that and the next month he called me before the rent was due. He said 'if [the post-dated cheques] don't go through, we're going to evict you'. He went ahead. It cost him \$200.00 in fees. He cashed the cheque in September, and I offered cash even or more cheques, but he said, 'No we're going a different route'; they started the eviction process. He figured he'd have me out before I even returned. They literally wanted my possessions out. I was in New Brunswick.

[S.P.] wants me out to double the rent for more money. He said I only have to pay \$2,300.00 in rent, but I offered to pay \$2,500.00 a month and gave him 12 cheques.

I asked the Tenant which in which months he did not pay his rent. The Tenant said:

July and August, because I asked him to hold July's rent and August came and he cashed both cheques. I told him I was going to New Brunswick and take September, and I'll pay you the two months when I get back.

I asked the Agents in which months the Tenant has failed to pay how much rent. The Agents said that the Tenant has paid no rent since May 2021. They said he owes them full rent for June, July, August, and September 2021. They seek \$10,000.00

The Agents said:

I want to be crystal clear here. We don't want to kick him out. We would have been happy enough to get our \$2,500.00 on time in full. That hasn't been done. There are trailers, people on the property who we don't know whose there. I haven't seen [the Tenant] here in six months.

He isn't paying his rent; he hasn't paid his rent on time since the beginning. The property is in complete disrepair. We don't know who is on the property. I live in this community. We have had numerous complaints. The property is an absolute spectacle. We don't want to stand for it anymore. Have these people removed as soon as possible.

Included in the Landlord's evidence is an account statement showing that the Tenant's \$2,500.00 rent payment was returned for insufficient funds in August 2021. This account indicated that the bank's chargeback fee for insufficient funds is \$7.00. The Landlord also submitted an account statement showing there being insufficient funds for the Tenant's September 2021 rent cheque. Again, the chargeback was \$7.00, and not \$25.00 that the Agent had suggested was owing in bank fees.

Prior to this participatory hearing being scheduled, the Landlord had applied for a direct request hearing, for which the Landlord submitted a monetary order worksheet listing the months of rent they were claiming at that point. The Landlord claimed that the Tenant had failed to pay rent in July, August, and September 2021; however, the Landlord did not initially apply for compensation for June 2021 rent. Further, they claimed \$2,700.00 per month in their initial claim, rather than the \$2,500.00 per month that the Parties agreed the Tenant owes the Landlord on a monthly basis.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Further, the Tenant's repeated request for the Landlord to hold off cashing the rent cheque(s) is unreasonable pursuant to the Act and the tenancy agreement. A landlord has a right to expect payment of rent on the first day of each month. I find the Tenant's arguments in this matter are without merit.

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. I find that the Landlord's 10 Day Notice to end the tenancy is valid and enforceable.

Accordingly, I find that the Landlord is eligible for a monetary award for unpaid rent, pursuant to section 55 (1.1) of the Act.

In addition, while the Landlord claimed \$25.00 per month in bank fees for insufficient funds for the rent cheques, the Landlord's evidence shows that the bank fees were only \$7.00 per month. As such, and pursuant to section 7 (1) (c) of the Regulation, I award the Landlord with **\$21.00** in bank fees from the Tenant.

Section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of an eviction notice for unpaid rent to pay the overdue rent or to dispute the notice by applying for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant received the 10 Day Notice on September 6, 2021, three days after it was posted to the door, pursuant to section 90. Accordingly, and pursuant to section 46 of the Act, the Tenant had until September 11, 2021, to dispute the 10 Day Notice by applying for dispute resolution or paying rent in full. The Tenant performed neither of these actions. I find that overdue rent has not been paid, and that rent in the amount of \$7,500.00 remains outstanding. Accordingly, I award the Landlord with **\$7,500.00** from the Tenant for unpaid rent, pursuant to sections 46, 55 (1.1), and 67 of the Act.

As rent was not paid when due, I find further that the Landlord is entitled to an **Order of Possession**, which will be **effective two days after service** on the Tenant.

Having been successful in their Application, I find the Landlord is also entitled to an award of \$100.00 from the Tenant in recovery of the Application filing fee, pursuant to section 72 of the Act.

Summary and Offset

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$1,350.00 security deposit in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain \$1,350.00 of the Tenant's security deposit, and I grant the Landlord a Monetary Order of **\$6,271.00**, calculated, as follows:

| | |
|------------------|--------------------------|
| Unpaid Rent | \$7,500.00 |
| Bank Fees | 21.00 |
| Filing fee | <u>100.00</u> |
| Sub-total | <u>\$7,621.00</u> |
| Less deposit | <u>(1,350.00)</u> |
| TOTAL | <u>\$6,271.00</u> |

Conclusion

The Landlord's Application for recovery of unpaid rent and bank fees is successful in the amount of \$7,521.00. Further, the Landlord is awarded recovery of the \$100.00 Application filing fee from the Tenant for a total monetary award of **\$7,621.00**

The Landlord is authorized to retain the Tenant's security deposit of **\$1,350.00** in partial satisfaction of the Landlord's monetary awards. I grant the Landlord a **Monetary Order** under section 67 of the Act from the Tenant of **\$6,271.00** for the remainder of the monetary awards owed by the Tenant to the Landlord. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 Supreme Court of British Columbia 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: December 31, 2021

Residential Tenancy Branch