



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, OPC, MNRL-S, MNDCL-S, FFL**

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant 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 landlord was assisted by their agent. The tenant was assisted by family members.

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 tenant testified that they received the landlord's 10 Day Notice dated September 3, 2021, the landlord's application, Notice of Dispute Resolution proceeding and evidence and have not filed any evidence of their own. Based on their testimony I find the tenant duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord requested to amend the amount of their monetary claim indicating that since the application was filed additional rent has come due. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due over time is reasonably foreseeable I amend the landlord's application to increase the monetary claim to \$9,350.00.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

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.

The parties agree on the following facts. The monthly rent for this tenancy is \$1,700.00 payable on the first of each month. A security deposit of \$600.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay monthly rent as required under the tenancy agreement and there was a rental arrear of \$2,550.00 as at September 3, 2021 when the landlord issued the 10 Day Notice to End Tenancy for Unpaid Rent. The tenant testified that they were served with the notice and had not filed an application to dispute the notice. The tenant further confirmed that they have not made any payment against the arrear or for any subsequent rent since the issuance of the notice.

The landlord submits that the total rental arrear as at January 31, 2021, the date of the hearing, is \$9,350.00.

The tenant made various submissions including that they had attempted to file an application to dispute the 10 Day Notice in August, 2021, before its issuance, that the rental unit is in need of repairs, that they believe the landlord has increased the rent in contravention of the Act, and that they have attempted to make rent payments but these payments have been refused by the landlord. The tenant had not served any documentary evidence on the landlord nor submitted any materials to the Branch. The tenant spent much of the hearing time complaining about their internet service provider saying they had evidence they now intended to submit.

Analysis

I accept the undisputed evidence of the parties that monthly rent for this tenancy is \$1,700.00 payable on the first of each month. I accept the evidence that the tenant failed to pay the full rent as required and there was an arrear of \$2,550.00 as at September 3, 2021 giving rise to the issuance of the 10 Day Notice.

I accept the undisputed testimony of the tenant that they were duly served with the 10 Day Notice and they have not filed an application to dispute the notice nor have they paid any amount towards the arrear within 5 days of service or at all.

I do not find the tenant's various submissions to be persuasive, reasonable or have an air of reality. I find the tenant's claim that they filed an application to dispute a notice prior to its issuance to be illogical and not supported in the records of the Branch or any documentary materials. I find the tenant's claim that they have attempted to pay rent to the landlord to be disputed, not supported in the evidence and have so little details as to have no air of reality. I do not find the tenant or their family members to be credible witnesses as their statements are not supported in any documentary evidence, are logically inconsistent, and bear no resemblance to the conduct of a reasonable person under similar circumstances.

Therefore, pursuant to section 46(5) of the *Act* I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. Accordingly, I issue an Order of Possession in the landlord's favour. As the effective date of the notice has passed, I issue a notice enforceable 2 days after service.

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 accept the evidence that the tenant has not paid rent as required under the tenancy agreement and that the total rental arrear as of the date of the hearing, January 31,

2021, to be \$9,350.00. Accordingly, I issue a monetary award in the landlord's favour for that amount.

As the landlord was successful in their application, they are also 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

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 \$8,850.00, allowing for the recovery of the rental arrear and filing fee and to retain the security deposit. 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: January 31, 2022

Residential Tenancy Branch