



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Cove Mainland Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **TT: CNR, RP, AAT, PSF, LRE, LAT, OLC, MNDCT, FFT**
LL: OPR-DR, MNR-DR, FFL

Introduction

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

The landlord applied for:

- an Order of Possession pursuant to section 55;
- a monetary order pursuant to section 67; and
- authorization to recover the filing fee for this application 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 to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow access to or from the rental unit or site for the tenant or the tenant’s guests pursuant to section 70;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and

- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agents (the “landlord”) who were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlords testified that they served the tenant with their Notice of Hearing and materials on October 28, 2021 personally to the tenant. Based on the undisputed testimony of the landlords and their documentary evidence by way of a completed Proof of Service form I find the tenant duly served with the landlord’s materials on October 28, 2021 in accordance with sections 88 and 89 of the *Act*.

During the hearing the landlord requested to amend the amount of their monetary claim in their application stating that additional rent has come due since the time of filing. 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 amount of their monetary claim from \$2,500.00 to \$7,500.00.

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?

Is the tenant entitled to any of the relief claimed?

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

Background and Evidence

The landlord gave undisputed evidence on the following facts. This periodic tenancy began in September 2020. The current monthly rent is \$1,250.00 payable on the first of each month. A security deposit of \$625.00 was collected at the start of the tenancy and is still held by the landlord.

The tenant failed to pay rent as required and there was a rental arrear of \$2,500.00 on October 14, 2021 giving rise to the issuance of a 10 Day Notice on that date. The 10 Day Notice was served on the tenant by posting on the rental unit door on October 14, 2021. The landlord provided undisputed testimony and documentary evidence by way of a completed Proof of Service form.

The tenant failed to pay the rental arrear in full within 5 days of service of the 10 Day Notice or at all. The tenant has failed to pay any rent for the subsequent months of November and December 2021 and January and February 2022. The landlord submits that the total rental arrear as of the date of the hearing, February 3, 2022, is \$7,500.00.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 9:30am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's entire application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end.

I find that there was an enforceable tenancy agreement between the parties wherein the tenant was obligated to make monthly rent payments in the amount of \$1,250.00. I

accept the evidence of the landlord that the tenant failed to pay rent as required and there was an arrear of \$2,500.00 on October 14, 2021 giving rise to the issuance of the notice. I therefore find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (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 undisputed evidence of the landlord that the tenant has failed to pay rent as required under the tenancy agreement and there is a total arrear of \$7,500.00 as at the date of the hearing, February 3, 2022. I find the landlord's calculations and cogent, consistent testimony to be sufficient to meet their evidentiary onus on a balance of probabilities. I therefore issue a monetary award in the landlord's favour in the amount of \$7,500.00.

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.

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 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 \$6,975.00, allowing for the recovery of the rental arrear and filing fee and to retain the security deposit for this tenancy. 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: February 3, 2022

Residential Tenancy Branch