



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: CNL CNR
 LL: OPR MNDC

Introduction

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

The tenants sought:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”) pursuant to section 49; and
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46.

The landlord applied for:

- an Order of Possession pursuant to section 55; and
- a monetary order for damages and loss pursuant to section 67.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The named landlord was assisted by a family member and agents. The tenant was assisted by their spouse.

The tenant left the conference call briefly before I had concluded the hearing. The teleconference line was left open for the duration of the hearing to allow the tenant to reconnect but they did not do so. No new evidence was submitted in the absence of the tenant and only administrative matters such as confirming the landlord’s email address for delivery of the decision was conducted.

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* and in any event have been sufficiently served in accordance with section 71.

At the outset of the hearing the landlord gave evidence that since the application was filed additional rent has come due and owing. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure as additional rent coming due is reasonably foreseeable, I amend the landlord's application to increase their monetary claim to \$4,800.00.

Issue(s) to be Decided

Is either party entitled to the relief sought?

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 \$1,200.00 payable on the first of each month. No deposit was collected for this tenancy. The parties submit that a 2 Month Notice dated March 16, 2022 was issued by the landlord on or about that date. Neither party provided a copy of any 2 Month Notice into evidence.

The landlord submits that the tenant failed to pay rent in the amount of \$1,200.00 on April 1, 2022 as required and they issued a 10 Day Notice on April 13, 2022 indicating the rental arrear. The tenant confirmed receipt of the 10 Day Notice and filed an amendment to their application on April 14, 2022 to dispute the 10 Day Notice.

The tenant testified that they pre-paid \$7,200.00 in cash to the landlord on February 5, 2022 and therefore no rent is owing or payable. The tenant says they gave the amount in cash to the landlord and did not request nor receive a receipt for the payment. The tenant provided no documentary evidence in support of this payment.

Analysis

In accordance with sections 49(8) and 46(4) of the *Act* and Residential Tenancy Rule of Procedure 6.6 when a tenant disputes a Notice to End Tenancy the onus to prove the reason for the tenancy to end falls to the landlord.

Neither party provided a copy of any 2 Month Notice to End Tenancy for Landlord's Use. Consequently, I find that I am unable to make a finding on whether a valid 2 Month Notice that conforms to the form and content requirements of section 52 of the *Act* was ever issued.

The parties agree that monthly rent is \$1,200.00 payable on the first of each month. I am satisfied with the cogent, consistent and reasonable testimony of the landlord that the tenant has failed to pay rent as required under the tenancy agreement on April 1, 2022. I do not find the tenant's submission that they made a cash payment of \$7,200.00 for which they did not request a receipt from the landlord, and have no documentary evidence to support, to be within the realm of how a reasonable person would behave.

I note the timing of the alleged failure to pay the monthly rent falls immediately after the parties say a Notice to End Tenancy for Landlord's Use was issued. I find it likely that having been issued a Notice the tenant decided that they would stop paying any rent and reside in the rental unit for as long as possible without making payment.

I am satisfied with the evidence of the landlord, on a balance of probabilities, that the tenant has failed to pay rent as required under the tenancy agreement. I find there was a rental arrear of \$1,200.00 when the 10 Day Notice was issued and that the tenant has failed to pay the overdue rent within 5 days of service, or at all. I therefore find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*. As the effective date of the notice has passed I issue an order enforceable 2 days after service on the tenant.

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 of the parties that monthly rent is \$1,200.00. I accept the landlord's evidence that no rent has been paid for this tenancy since April 2022 and there is an arrear of \$4,800.00 as at the date of the hearing. Accordingly, I issue a monetary award in the landlord's favour in that amount.

Conclusion

The tenant's application is dismissed 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 \$4,800.00. 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: July 14, 2022

Residential Tenancy Branch