



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFIC QUORUM OKANAGAN
PROPERTIES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNR-DR, FFL, OPR-DR, MNRL, MNDCL**

Introduction

This review 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 damages and loss pursuant to section 67; 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 an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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 landlord confirmed receipt of the review consideration decision, notice of reconvened hearing and tenant's evidence.

The tenant initially testified that they were served with the landlord's application and evidence but subsequently contradicted their own testimony and disputed that they had been served with any materials. It subsequently became clear that the tenant was claiming no new evidence was served on them after they had been served with the landlord's initial hearing package.

In the Review Consideration Decision the arbitrator simply writes:

Further, each party must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the new hearing.

It is clear that the landlord was not required to serve the tenant with their same evidence for a second time after the issuance of the review consideration decision. The landlord testified that they intend to rely on the initial evidentiary materials which the tenant confirmed they received.

Based on the 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 requested to amend the amount of their monetary claim in their application saying that 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 is reasonably foreseeable, I amend the landlord's application to increase their monetary claim to \$5,131.00.

Issue(s) to be Decided

Is the landlord entitled to the relief sought?

Background and Evidence

The parties agree on the following facts. This periodic tenancy originally began on May 1, 2017. The current monthly rent is \$1,268.75 payable on the first of each month. A security deposit of \$625.00 was collected and is still held by the landlord.

The landlord submits that the tenant failed to pay rent as required on February 1, 2022 and therefore the landlord issued a 10 Day Notice dated February 4, 2022. The

landlord testified that the tenant did not pay the full amount of the arrear nor did they file an application to dispute the notice. The landlord submits that the tenant has continued to occupy the rental unit after the effective date of the 10 Day Notice and has failed to pay any amount towards rent or usage of the rental unit. The landlord calculates the total arrear for this tenancy, as at the date of the hearing, as \$5,131.00.

The tenant confirmed receipt of the 10 day notice but submits that they made full payment of the rental arrear. The landlord submitted into documentary evidence correspondence and bank statements showing that cheques received from the tenant failed to clear as NSF and any payments that were successfully made after the effective date of the 10 Day Notice were indicated to be for “use and occupancy only” and did not reinstate the tenancy.

The tenant gave lengthy testimony about payments that they believe they have made, placed responsibility for making payments for other months to another occupant they say resides in the building and claimed that they have issued cheques to the landlord and there is no rental arrear for this tenancy.

Analysis

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 a valid 10 Day Notice.

In the present case the tenant confirmed receipt of the 10 Day Notice dated February 4, 2022 on or about that date. The tenant testified that they have made payment of the arrear but it is clear from the documentary evidence of the landlord that the cheque issued failed to clear and no payment was made. Accordingly, I find the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 17, 2022. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

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 landlord that the total rental arrear for this tenancy as at the date of the hearing is \$5,131.00. I find the landlord's calculations and explanation of how this sum was determined to be logical and consistent with the documentary evidence.

I do not find the tenant's claim that they have made payment to the landlord to be believable nor supported in the documentary materials. I find the tenant's claim that another occupant is responsible for payment of monthly rent to have no foundation and be of little probative value.

Therefore, I issue a monetary award in the landlord's favour in the amount of \$5,131.00.

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 \$4,606.00, representing recovery of the rental arrear and filing fee and authorization 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: August 15, 2022

Residential Tenancy Branch