



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING ADVISORY
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:15 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord, represented by agents LH (the landlord) and SF, attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the landlord's testimony and the proof of service form (RTB 34) indicating that that the tenant was served with the application and evidence (the materials) by registered mail on June 09, 2022, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision). The landlord mailed the package to the rental unit's address.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on June 14, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on May 1, 2017. Monthly rent is \$945.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$422.50 was collected and the landlord holds it in trust.

The landlord submitted the proof of service form (RTB 34) indicating that the tenant was served with the Notice via registered mail on April 8, 2022 and provided affirmed testimony confirming the service of the Notice. The tracking number is recorded on the cover page of this decision.

The landlord submitted into evidence a copy of the April 08, 2022 Notice. It indicates the tenant did not pay rent in the amount of \$1,269.00 due on April 01, 2022. The effective date is April 25, 2022.

The landlord stated she served the Notice with a ledger indicating the tenant did not pay the balance of March 2022 rent in the amount of \$324.00 and April 2022 rent in the amount of \$945.00.

The landlord testified the tenant paid \$472.00 on May 02, \$522.00 on May 30, \$472.00 on July 05, \$500.00 on July 31, \$500.00 on August 31 and \$500.00 on October 04, 2022. The landlord issued receipts for use and occupancy only.

The landlord said the tenant continues to occupy the rental unit.

The landlord submitted a direct request worksheet indicating the tenant did not pay rent due on April 01, 2022.

Analysis

I accept the uncontested testimony and the proof of service (RTB 34) that the landlord served the Notice on April 08, 2022 in accordance with section 88(c) of the Act. Per section 90 (a) of the Act, the tenant is deemed to have received the Notice on April 13, 2022.

Based on the landlord's convincing testimony, I find that the parties agreed to a tenancy and the tenant is obligated to pay the monthly rent in the amount of \$945.00 on the first day of each month.

Pursuant to section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 46(4) and (5) of the Act states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

Based on the landlord's convincing testimony, the Notice and the direct request worksheet, I find the tenant has not paid the full amount of rent due recorded on the Notice (\$1,269.00) by April 18, 2022, the fifth day after the date the tenant is deemed to have received the Notice.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Based on the above, I find the tenancy ended on April 25, 2022, per section 44(1)(a)(ii) of the Act. I award the landlord an order of possession, per section 55(2)(b) of the Act.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain \$100.00 from the security deposit to recover the filing fee.

The landlord should address the remainder of the security deposit in accordance with section 38 of the Act.

Conclusion

Pursuant to section 55(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service of this order on the tenant. Should the tenant fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to section 72(2)(b) of the Act, I authorize the landlord to retain \$100.00 from the security deposit to recover the filing fee.

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: October 06, 2022