



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOGWOOD HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated May 13, 2022 ("10 Day Notice"); for a monetary order for unpaid rent of \$25,017.50, which the Agent said has increased significantly since the 10 Day Notice was served; and to recover their \$100.00 Application filing fee.

An agent for the Landlord, N.C. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord's Agent, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave him an opportunity to ask questions about it. During the hearing the Agent was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that he served the Tenant with the Notice of Hearing documents by posting them on the rental unit door on July 28, 2022. The Agent also said that he served the Landlord's evidentiary documentation to the Tenant on August 28, 2022, by

posting it on the rental unit door. Based on the evidence before me on this matter, I find on a balance of probabilities that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documentation, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided the Landlord's email address in the Application and he confirmed it in the hearing. The Agent did not know the Tenant's email address, therefore, I said we would mail the Decision to the Tenant at the residential property. The Agent confirmed his understanding that the Decision would be emailed to the Landlord, mailed to the Tenant, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agent that pursuant to Rule 7.4, I would only consider the Landlord's written or documentary evidence to which the Agent pointed or directed me in the hearing. I also advised the Agent that he is not allowed to record the hearing and that anyone who was recording it was required to stop immediately. The Agent confirmed that he was not recording the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed the details of the tenancy. He said the periodic tenancy began on November 1, 2013, with a (current) monthly rent of \$1,525.00, due on the first day of each month. The Agent said that the Tenant paid the Landlord a security deposit of \$637.50, and no pet damage deposit. The Agent indicated that the Landlord still holds the Tenant's security deposit in full.

The Agent submitted a copy of the 10 Day Notice, which was signed and dated May 13, 2022, and which has the rental unit address. The 10 Day Notice was served by attaching a copy to the rental unit door on May 13, 2022, with an effective vacancy date of May 26, 2022. The 10 Day Notice was served on the grounds that the Tenant failed to pay the Landlord \$25,017.50 in rent when it was due on May 1, 2022.

In the hearing, the Agent said the Landlord was evicting the Tenant from the residential property, because of unpaid rent. I asked the Agent why it took the Landlord so long to do this, given the amount of rent that is now owing. The Agent said:

I started – I did a worksheet with his payments. I started having problems with the Tenant in September of 2019. Rent was paid very sporadically. Then the pandemic hit. Then he said he lost his job. We're trying to help, as we're a non-profit; we understood that during the pandemic it was tough for everyone. And there was a period of many months where we couldn't evict. All during this time, he's coming to us about rent. I think he works in the film industry, and we believed he was affected by the pandemic. I applied earlier through a direct process, but that was turned down, because I didn't do the proper paper work, and then I had to go with this process.

The Agent clarified the amount he says is now owing in rent by the Tenant. He said the Tenant has not paid anything to the Landlord in rent for June through October 2022. He said this was five months of \$1,525.00 in rent not paid for a total of \$7,625.00. This was in addition to the \$25,017.50 in rent owing as of May 1, 2022. As such, I find that the Landlord is now claiming \$32,642.50 in rent arrears. The Agent said: "He has paid nothing since May; I haven't even heard from him. At least he used to be kind enough to update us."

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after updating the Landlord's original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$25,017.50 to \$32,642.50.

The Agent submitted a copy of his worksheet or ledger indicating the Tenant's varied rent payments since September 2019 ("Worksheet"). This Worksheet includes a \$157.50 charge for damage to a bedroom door, and six charges of \$25.00 for insufficient funds paid by the Tenant to the Landlord. These insufficient funds fees relate to the Tenants' rent payments or lack thereof in September through December 2019, January 2020, and March 2020. The Worksheet indicates that the Tenant paid no rent or insufficient rent from March 2020 through May 2022, which resulted in the \$25,017.50 owing as set out on the 10 Day Notice.

Clause 10 of the Parties' tenancy agreement states:

- 10. ARREARS.** Late payment, returned, or non-sufficient funds (N.S.F.) cheques, are subject to an administrative fee of not less than \$25.00 each, plus the amount of any service fees charged by a financial institution to the Landlord. Although these fees are payable by the Tenant to the Landlord, the failure to pay the rent on the due date is a breach of a material term in this Agreement.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) 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.

...

(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.

[emphasis added]

Based on the evidence before me in this matter, I find that the Tenant failed to pay anything towards the rent owing after he received the 10 Day Notice. Further, there is no evidence before me that he applied for dispute resolution to cancel the 10 Day Notice. As such, and according to section 46 (5) of the Act, I find that the Tenant is

conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me, and pursuant to sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on May 16, 2022, three days after it was posted on the rental unit door.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

In the hearing, the Agent said that the Landlord was owed \$32,642.50 in unpaid rent, insufficient funds fees, and damage to a door as of October 1, 2022. I find that the Landlord's claim for compensation of **\$157.50** for damage to a door in the residential property is not recoverable under the Landlord's current Application. As such, I have deducted this from the amount claimed by the Landlord in compensation, arriving at an eligible total claim of **\$32,485.00**.

In terms of the Landlord's **\$25.00 fees** for insufficient funds paid by the Tenant, the *Residential Tenancy Act* Regulation sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

. . .

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

In this case, the Landlord provided evidence that the Tenant failed to pay sufficient funds to the Landlord on more than six occasions; however, the Landlord has claimed only \$150.00 in insufficient funds fees from the Tenant. As the fully executed tenancy agreement contains a clause setting out this fee in such a situation, I find that the Landlord can impose the \$25.00 fee in this case.

I also find that the 10 Day Notice is in the approved form and is valid, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the \$32,485.00 in rent and insufficient funds fees incurred during the last three years of the tenancy. Accordingly, the Landlord's Application for an Order of Possession is granted, pursuant to section 55 of the Act. Further, as the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenant has not paid full rent since February 2020, the **Order of Possession** will be **effective two days after service** of the Order on the Tenant.

In addition, and pursuant to section 67 of the Act, I award the Landlord with **\$32,485.00** from the Tenant in rent arrears and unpaid fees. Further, given the Landlord's success in this Application, I award the Landlord with **\$100.00** from the Tenant for the Landlord's Application filing fee, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$637.50 security deposit of in partial satisfaction of the Landlord's monetary awards. I authorize the Landlord to retain the Tenant's **\$637.50** security deposit pursuant to sections 72 and 67 of the Act.

Accordingly, I grant the Landlord a Monetary Order from the Tenant of **\$31,947.50**, pursuant to sections 46 and 67 of the Act.

Conclusion

The Landlord is successful in their Application, as they provided sufficient evidence to prove on a balance of probabilities that the Tenant has not paid rent in full for more than the last two and a half years; therefore, the Landlord's Application for an Order of Possession is granted.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** effective **two days after service of this order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible.

Should the Tenant fail to comply with this order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Further, the Landlord is granted a Monetary Order of **\$31,947.50** from the Tenant, which funds includes rent arrears, insufficient funds fees, and recovery of the Landlord's **\$100.00** Application filing fee, less the Tenant's **\$637.50** security deposit, which the Landlord is authorized to retain in partial satisfaction of the monetary awards.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 27, 2022

Residential Tenancy Branch