



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MCA INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the landlord's application, filed on July 12, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord's two agents, "landlord TC" and "landlord KFM," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:58 p.m. I monitored the teleconference line throughout this hearing. 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's two agents and I were the only people who called into this teleconference.

The landlord's two agents confirmed their names and spelling. Landlord KFM provided his email address for me to send this decision to the landlord after the hearing.

Landlord TC confirmed that she owns the landlord company ("landlord") named in this application. She said that the landlord owns the rental unit. She claimed that landlord KFM had permission to represent the landlord and speak on her behalf at this hearing. She identified landlord KFM as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord’s two agents affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord’s two agents. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests. They confirmed that they were ready to proceed with this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is an ex-parte, non-participatory hearing. A decision is made on the basis of the landlord’s paper application only, not any participation or evidence from the tenant. An “interim decision,” dated August 24, 2022, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing, also dated August 24, 2022, to the tenant. Landlord KFM stated that the tenant was served with the above documents on August 25, 2022, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and landlord KFM confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on August 30, 2022, five days after its registered mailing.

Landlord KFM stated that the tenant was served with the landlord’s original application for dispute resolution by direct request on July 27, 2022, by way of registered mail to the rental unit where the tenant is still residing. The landlord provided a Canada Post receipt and landlord KFM confirmed the tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s original application for dispute resolution by direct request on August 1, 2022, five days after its registered mailing.

Landlord KFM stated that he served the tenant with the landlord’s Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2022 (“10 Day Notice”) on June 3, 2022, by way of posting to the tenant’s rental unit door, where the tenant is still residing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was

deemed served with the landlord's 10 Day Notice on June 6, 2022, three days after its posting.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include November 2022 to January 2023 rent, which was not yet due when the landlord filed this application on July 12, 2022. Landlord KFM requested this amendment during this hearing.

I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due.

Therefore, the tenant knew or should have known that by failing to pay his full rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

At the outset of this hearing, landlord KFM stated that the tenant paid the landlord for the cost of the \$100.00 filing fee for this application. He said that the landlord is no longer pursuing this claim against the tenant. This portion of the landlord's application is dismissed without leave to reapply.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

Landlord KFM testified regarding the following facts. This tenancy began on April 25, 2021. Monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenant and the landlord continues to retain this deposit in full. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

Landlord KFM stated the following facts. The landlord issued the 10 Day Notice, which has an effective move-out date of June 17, 2022, indicating that rent in the amount of \$2,200.00 was due on June 1, 2022. The landlord provided a copy of the notice. The tenant paid June 2022 rent of \$2,200.00 late on August 7, 2022. The tenant continued to pay rent of \$2,200.00 late for each month from July to October 2022. The tenant failed to pay rent of \$2,200.00 for each month from November 2022 to January 2023, totalling \$6,600.00. Even though the landlord accepted rent after the effective date of the 10 Day Notice, landlord KFM repeatedly reminded the tenant, by way of WhatsApp messages, about this hearing, told him to pay the rent, informed him that he had a 10 Day Notice, and notified him that this dispute continues.

Landlord KFM confirmed that the landlord seeks an order of possession based on the 10 Day Notice, and a monetary order of \$6,600.00 for unpaid rent from November 2022 to January 2023.

Landlord TC confirmed the landlord increased the tenant's monthly rent by 2% starting in January 2023, by providing the tenant with a notice of rent increase ("NRI"), but the landlord did not provide a copy of the NRI for this hearing. She said that the landlord is not seeking increased rent from the tenant for January 2023, and she understands that the landlord cannot reapply for same in the future. I provided the landlord with an opportunity to withdraw and reapply for January 2023 rent later after providing the NRI and evidence for same, but landlord TC stated that the landlord did not want to do so, because it cost too much money and the tenant never paid rent on time.

Analysis

The landlord provided undisputed, affirmed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2022, within five days of being deemed to have received the 10 Day Notice on June 6, 2022. Even though the tenant paid the June 2022 rent on August 7, 2022, this is not within the five-day period. The tenant did not file an application, pursuant to section 46(4) of the *Act*, within five days of being deemed to have received the 10 Day Notice.

In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on June 17, 2022, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 17, 2022. As this has not occurred and the effective date has long passed, I find that the landlord is entitled to a two (2) day

order of possession against the tenant pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

I find that the landlord did not waive its right to enforce the 10 Day Notice, by accepting rent from the tenant after the effective date of June 17, 2022, on the notice. I accept the testimony of landlord KFM that he repeatedly reminded the tenant about this application, hearing, 10 Day Notice, and unpaid rent, by way of WhatsApp messages. The landlord did not cancel this hearing or withdraw this application. The landlord pursued an order of possession based on the 10 Day Notice, at this hearing. I find that the landlord's express and implied conduct indicated that it was pursuing an eviction of the tenant based on the 10 Day Notice, despite accepting rent from the tenant after the effective date of the notice.

As per section 26 of the *Act*, the tenant is required to pay rent on the date indicated in the tenancy agreement, which is the first day of each month, in this case. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for loss that results from that failure to comply.

The landlord provided undisputed, affirmed evidence that the tenant failed to pay rent of \$2,200.00 from November 2022 to January 2023, totalling \$6,600.00. Therefore, I find that the landlord is entitled to \$6,600.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,100.00. No interest is payable on the deposit over the period of this tenancy. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$1,100.00, in partial satisfaction of the monetary award. The landlord is provided with a monetary order for the balance of \$5,500.00.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service of this Order** on the tenant. The tenant must be served with this Order. Should the tenant or anyone 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 order the landlord to retain the tenant's entire security deposit of \$1,100.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$5,500.00 against the tenant. The tenant must be served with this Order. 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.

The remainder of the landlord's application is dismissed without leave to reapply.

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: January 06, 2023

Residential Tenancy Branch