



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CASCADIA APARTMENT RENTALS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR FFL OPRM-DR

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied 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 from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served the 10 Day Notice on the tenant on November 6, 2019 by posting on the rental unit door. In accordance with section 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on November 9, 2019, three days after posting.

The landlord testified that they served the landlord's application for dispute resolution dated November 15, 2019 on the tenant by registered mail sent on November 22, 2019. The landlord provided a valid Canada Post tracking number and receipt as evidence of

service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on November 27, 2019, five days after its mailing.

At the outset of the hearing, the landlord made an application to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed additional rent has come due and the total arrear as of the date of the hearing is \$3,257.00. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as additional rent becoming due is reasonably foreseeable, I amend the landlord's Application to increase the monetary claim from \$700.00 to \$5,300.00.

Issue(s) to be Decided

Should the 10 Day Notice be set aside? If not is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent as claimed?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began in March 2008. The monthly rent was \$1,166.00 payable on the first of each month. The rent was increased by way of a Notice of Rent Increase for January 2020 to \$1,195.00. A security deposit of \$475.00 was paid by the tenant at the start of the tenancy and is still held by the landlord. The tenant occupies the rental unit as of the date of the hearing.

The landlord testified that at the time the 10 Day Notice was issued the tenancy was in arrears by \$1,166.00, the amount sought in the 10 Day Notice. The landlord said the tenant made no payments nor any attempt at payments since the 10 Day Notice was issued. Since the 10 Day Notice was issued the tenant has failed to pay the rent for the months of December 2019 and January 2020 and the total arrear for this tenancy as of the date of the hearing is \$3,527.00.

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides that:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application with or without leave to re-apply.

Consequently I dismiss the tenant's application without leave to reapply.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, and I find that the landlord's 10 Day Notice complies with the form and content requirements of section 52 as it is signed and dated by the landlord, provide the address of the rental unit, the effective date of the notice, and the grounds for the tenancy to end, I find that the landlord is entitled to an Order of Possession pursuant to section 55. As the effective date of the notice has passed, I issue an Order of Possession effective two (2) days after service.

I find that the tenant was obligated to pay monthly rent in the amount of \$1,166.00 for November and December 2019 and in the amount of \$1,195.00 for January 2020. I accept the landlord's undisputed evidence that the total amount of arrears for this tenancy is \$3,527.00. I issue a monetary award in the landlord's favour for unpaid rent of \$3,527.00 as at January 6, 2020, the date of the hearing, pursuant to section 67 of the *Act*.

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 of \$475.00 in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord was successful in their application they are entitled to recover the filing fee from the tenant.

Conclusion

The tenant's application is dismissed.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. 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 issue a monetary order in the landlord's favour in the amount of \$3,152.00 under the following terms, which allows the landlord to recover unpaid rent and the filing fee for their application:

Item	Amount
Unpaid Rent November	\$1,166.00
Unpaid Rent December	\$1,166.00
Unpaid Rent January	\$1,195.00
Less Security Deposit	-\$475.00
Filing Fee	\$100.00
Total Monetary Order	\$3,152.00

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: January 6, 2020

Residential Tenancy Branch