



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Eagle Valley Senior Citizens Housing Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FFL

Introduction

On April 7, 2020 the Landlord submitted an Application for Dispute Resolution (the “Application”), seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on May 28, 2020 as a teleconference hearing. The Landlord appeared and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord’s Agent P.I., the Landlord’s counsel N.W., and I were the only persons who had called into this teleconference.

The Landlord testified the Application and documentary evidence package was served to the Tenant by registered mail on April 7, 2020. The Landlord provided a copy of the registered mail receipt in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on April 12, 2020, the fifth day after the registered mailing. The Tenant did not submit documentary evidence in response to the Application.

P.I. and N.W. were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However,

only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?
2. Is the Landlord entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The Landlord's Agent testified that the tenancy began on May 15, 2012. Rent in the amount of \$449.00 is due to the Landlord on the first day of each month. The Tenant was not required to pay any deposits. The Landlord's Agent stated that the Tenant continues to occupy the rental unit.

The Landlord's Agent testified the Tenant did not pay the full amount of rent in December 2019, January, February, and March 2020 in the amount of \$4,742.00. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 11, 2020 (the "10 Day Notice") with an effective vacancy date of March 21, 2020. The Landlord stated that the 10 Day Notice was served to the Tenant in person on March 11, 2020. The Landlord provided a proof of service as well as a copy of the 10 Day Notice in support.

The Landlord's Agent stated that the Tenant has not made any payments towards the outstanding balance of rent as indicated on the 10 Day Notice. The Landlord's Agent testified that the Tenant failed to pay rent when due for April and May 2020 as well. The Landlord's Agent stated that currently, the Tenant owes the Landlord \$5,640.00 in unpaid rent. The Landlord's Agent confirmed that the Landlord is only seeking an order of possession for unpaid rent at this time. The Landlord is at liberty to reapply for monetary compensation for the outstanding balance of rent. If successful, the Landlord is also seeking the return of the filing fee.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 26 of the Act explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this Act, the Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states 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.

I find based on the Landlord's Agent's uncontested testimony that the Landlord served the 10 Day Notice dated March 11, 2020 with an effective vacancy date of March 21, 2020 to the Tenant in person on March 11, 2020. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received on the same date. I find the Tenant is deemed to have received the 10 Day Notice on March 11, 2020.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until March 16, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's Agent's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the balance of rent owing in the amount of \$4,742.00 for December 2019, January, February and March 2020, and has also failed to pay rent when due for April and May 2020. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days and there is no evidence before me that the Tenant disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, March 21, 2020 pursuant to section 46(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to

an order of possession effective 2 (two) days, after service on the Tenant, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Conclusion

The Tenant has breached the *Act* by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective two (2) days after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$100.00, which represents the return of the filing fee paid to make the Application. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 28, 2020

Residential Tenancy Branch