



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PYDNA PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The landlord seeks the following remedies under sections 55, 67, and 72(1) of the Act:

1. an order of possession for unpaid rent;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

The landlord applied on August 28, 2018, for an *ex parte* direct request proceeding. The adjudicator adjourned the matter on September 11, 2018 for a participatory hearing. A participatory hearing was convened on October 25, 2018, and the landlord's counsel and agents attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend the hearing.

Documentary evidence submitted by the landlord indicated that the tenant was served the Notice of Dispute Resolution Proceeding package (the "package") by way of Canada Post registered mail on September 26, 2018. Canada Post's online tracking information indicates that the tenant picked up and signed for the package on October 5, 2018. I find that the landlord served the tenant with the package in compliance with section 89(2)(b) of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

Counsel for the landlord testified that the tenancy commenced in November 2007. Monthly rent is \$1,100.00 and is due on the first of the month. The tenant paid a security deposit in the amount of \$550.00.

The landlord's counsel further testified that the tenant has not paid rent for several months, including an accumulated amount of unpaid rent in July 2018 for \$6,250.00, and unpaid rent for August, September, and October 2018, for a total amount owing of \$9,550.00.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") was served by the landlord's agent ("E.H.") on the tenant by leaving a copy in the tenant's mail box. The Notice was served on July 13, 2018 and indicated an effective end of tenancy date of July 23, 2018.

Submitted into evidence in support of the landlord's claim were the following documents: a copy of a written tenancy agreement, a direct request monetary worksheet, the landlord's rent payment record of the tenant, and a copy of the Notice.

Landlord's counsel requested an order declaring the rental unit to be abandoned (thereby permitting the landlord to exercise the powers of seizure under sections 26(3) and 26(4) of the Act), given that they have not heard from the tenant in a long time. However, there are notes on the Residential Tenancy Branch file indicating that the tenant called the Residential Tenancy Branch on October 24 and again on October 25, 2018, seeking information on the process for requesting an adjournment of the hearing.

Given the above-noted information, it appeared that the tenant had intended to dispute the Notice, and as such I indicated to counsel that I was not prepared to make a finding of fact or law that the rental unit was abandoned.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord comply with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

Landlord's counsel and agent testified, and provided documentary evidence to support their submissions, that the tenant did not pay rent for months leading up to July 2018, and did not pay any rent for August, September or October 2018, inclusive, and that \$9,550.00 is currently owed. There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenant applied to cancel the Notice.

Taking into consideration the undisputed oral testimony of the parties, and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving its claim that the tenant owes \$9,550.00 in rent and hereby award the landlord a monetary award in that amount. Finally, as the landlord is successful in its claim, I grant the landlord a monetary award of \$100.00 for recovery of the filing fee.

I order that the landlord retain the security deposit in partial satisfaction of these awards.

A total monetary order of \$9,100.00 for the landlord is therefore calculated as follows:

CLAIM	AMOUNT
Unpaid rent	\$9,550.00
Filing fee	100.00
LESS security deposit	(\$550.00)
Total:	\$9,100.00

Regarding the order of possession sought by the landlord, 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

In this case, the landlord applied for dispute resolution seeking an order of possession, the landlord issued a notice to end the tenancy, the tenant did not dispute the Notice, and the time for making that application had expired. Therefore, I grant the landlord an order of possession.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. The order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I hereby grant the landlord a monetary order in the amount of \$9,100.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is final and binding, unless otherwise permitted 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 Act.

Dated: October 25, 2018

Residential Tenancy Branch