



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRST SERVICE RESIDENTIAL BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM FFL

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A monetary award for unpaid rent and utilities pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The agents CS and AM attended for the landlord (“the landlord”), the tenant attended with a translator CF (“the tenant”). Both parties were given the opportunity to present affirmed testimony, call witnesses and submit evidence.

The landlord testified the tenant was served with the Notice of Hearing and Application for Dispute Resolution; the tenant acknowledged receipt. No issues of service were raised. I find that the tenant was duly served in accordance with sections 89 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 46;
- A monetary award for unpaid rent and utilities pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

The landlord testified the tenant entered into a month-to-month residential tenancy agreement between with a previous owner beginning April 1, 2012. The landlord submitted a copy of the agreement. The current rent was \$941.00 per month, payable on the first day of each month. The landlord stated that that tenant paid a \$380.00 security deposit which the landlord still holds.

The parties agreed the landlord served the tenant with a Ten-Day Notice by posting it on the tenant's door on September 24, 2018 thereby effecting service under sections 88 and 90 of the Act three days later, that is, on September 27, 2018. The Ten-Day Notice stated a outstanding rent was \$2,180.00.

The landlord testified that the December rent payment of \$760.00 was accepted for "use and occupancy" and the landlord provided a receipt with that notation. The parties agreed the tenant did not pay rent for January 2019.

The landlord did not submit a Monetary Order Worksheet, a copy of the rental ledger, or receipts other than the one previously mentioned.

The tenant disagreed with the landlord's testimony regarding the recent history of rent payments and the amount of rent outstanding. The tenant testified that he paid all of rent payments except for rent owing for December 2018 and January 2019. The tenant did not produce any evidence of his payments and testified that the landlord did not provide receipts. However, the tenant acknowledged that he never requested receipts from the landlord.

The tenant acknowledged he made some payment, but did not pay the outstanding rent in full as set out in the Ten-Day Notice and he did not file an Application for Dispute Resolution.

The tenant testified that he did not pay the rent in December 2018 or January 2019 because the unit needed repairs. The tenant stated that there is a broken element on the stove, the kitchen sink and bathroom shower leak and there is low water pressure. The tenant testified that he had notified the landlord of these problems, but the landlord did not make repairs. The tenant did not submit evidence of notification of the need for repairs.

The landlord disputed the tenant's evidence. The landlord testified that the tenant made no requests for repairs. The landlord also stated that the unit had been recently inspected and the inspection did not reveal any need for repairs as alleged by the tenant.

The landlord requests an order of possession, a monetary order in the amount of \$3,157.00 for outstanding rent and reimbursement of the filing fee.

Analysis

While I have considered the oral and documentary evidence in its totality, I will only refer to relevant portions in my decision.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the landlord served the tenant with the 10-Day Notice on September 27, 2019 pursuant to sections 88 and 90 of the *Act*.

As acknowledged by the tenant, I find the tenant did not pay the overdue rent of \$2,180.00 as set out in the Notice within the five days following service or apply for dispute resolution. I find that the tenant did pay the sum of \$1,846.00 on October 2, 2018 which was within five days of the service of the 10-Day Notice. However, the tenant did not pay the entire amount of unpaid rent of \$2,180.00 specified on the 10-Day Notice. In addition, I find that the tenant did not apply for dispute resolution within the five days following service of the 10-Day Notice.

Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, October 8, 2018, requiring the tenant to vacate the rental unit by that date. I therefore grant the landlord an order of possession effective two days after service.

The next issue to address is whether the landlord is entitled to a monetary order for unpaid rent. The tenant and the landlord have provided very different, conflicting testimony regarding the rent payment history which is difficult to assess since neither party provided any substantial corroborating evidence. Both the landlord and the tenant agree that the January 2019 rent has not been paid so I do make a finding that the tenant owes the landlord for the January 2019 rent.

However, even though the tenants have agreed with the landlord's testimony that the rent increased from \$905.00 to \$941.00 in October 2018, I find that this rent increase is

invalid and that the rent in January 2019 was actually \$905.00. The landlord had submitted a Notice of Rent Increase dated December 19, 2017 which increased the rent from \$885.00 to \$905.00 effective on April 1, 2018. However, the s. 42 of *Act* mandates that a landlord cannot impose a rent increase for at least 12 months after the effective of a previous rent increase. This renders the October 2018 rent increase invalid since the previous rent increase had become effective just six months prior. Further, even if the tenant agreed to the October 2018 rent increase, this rent increase would still be invalid increase because s.5 of the *Act* prevents the parties from contracting outside of the *Act*.

Accordingly, I find that the is still \$905.00 and the landlord is awarded \$905.00 for the January 2019 rent. The testimony from the landlord and the tenant conflict on each of the other months in issue from July to December 2018.

To make a factual determination, an Arbitrator may consider such factors as the clarity, consistency, and overall plausibility of the evidence. Further, when assessing evidence an Arbitrator may make a determination of what appears to have most likely occurred having regard to all the evidence.

In applying these principles to this matter, I that neither party has produced sufficient evidence to establish the rent payment history on the balance of probabilities. I find the testimony of the landlord and the tenant regarding the rent payment history to be equally plausible. Without any corroborating evidence, I find that the rental history testimony of the landlord and the tenant appears to be equally likely to have occurred.

In the absence of such corroborating evidence, I find the testimony of the landlord and the tenant equally likely. The landlord has the burden of proof to prove its claim on the balance of probabilities and I find that that the landlord has failed to satisfy that burden. Accordingly, I find that the landlord has failed to prove a claim for a monetary loss except for the rent of \$905.00 for January 2019.

The tenant attempted to excuse his nonpayment of rent because of allegations of damage to the rental unit. However, this is not a valid excuse for the nonpayment of rent. 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 this Act, the regulations or the tenancy agreement."

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Based upon the foregoing, I find that the landlord is entitled to a monetary order for \$905.00 for unpaid rent.

Since the landlord has prevailed in this matter, I award the landlord recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*.

In summary, I grant the landlord an order of possession effective two days after service. I further grant the landlord a monetary order in the amount of \$1,005.00.

Conclusion

I grant an order of possession to the landlord effective **two days after service of this Order** on the tenant. This order must be served on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the landlord a monetary order in the amount of **\$1,005.00**. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be 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 09, 2019

Residential Tenancy Branch