



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1154813 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

This application began as an ex-parte application via the Direct Request process and was adjourned to a participatory based on the Interim Decision dated May 21, 2109, which should be read in conjunction with this decision.

At the participatory hearing, an agent for the landlord ("landlord") attended the teleconference hearing. The tenant did not attend the hearing. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence was considered. The landlord testified that the tenant was served by registered mail with the Direct Request and Notice of Hearing documents on May 24, 2019.

The landlord submitted a copy of the Canada Post receipt showing the tracking number of the registered mail, which is reflected on the style of cause page in this Decision. The landlord submitted that the tenant collected the registered mail.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served under the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, to a monetary order for unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on September 13, 2018, monthly rent payable by the tenant is \$1,600.00, due on the first day of the month, and a security deposit of \$800.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on April 30, 2019, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$3,200.00 as of April 30, 2019. The effective vacancy date listed on the Notice was May 10, 2019.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not vacated the rental unit, did not pay the amount listed on the Notice, and did not pay rent for the months of June and July, 2019.

The landlord has requested to increase their monetary claim of \$3,200.00 to include unpaid rent for the months of June and July 2019, in the amount of \$1,600.00 each month.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

The Notice is not effective earlier than ten days after the date the tenant received it. Under section 90 of the Act, a document served by attachment to the door is deemed received three days later.

In this case, the evidence shows that the Notice was attached on April 30, 2019, and therefore it is deemed received on May 3, 2019. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of May 10, 2019, on the Notice, is changed to May 13, 2019.

The landlord listed on the Notice that rent for April and May 2019, for a total of \$3,200.00, was due and not paid. Although the rent for May 2019 was not yet due on April 30, 2019, when the Notice was issued, I have determined that the tenant did owe unpaid rent for April 2019.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent for April 2019, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

I therefore find the tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, May 13, 2019.

I therefore find that the landlord is entitled to an order of possession for the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

As such, I grant the landlord a final, legally binding order of possession for the rental unit. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

As to the landlord's monetary claim, I allow the landlord to amend their application to include a claim for unpaid rent for June and July 2019, in the amount of \$3,200.00 in total.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of \$6,400.00 in unpaid rent through July 2019, due under the tenancy agreement. I grant the landlord a monetary award in this amount, pursuant to section 67 of the Act.

I also find the landlord is entitled to a monetary award of \$100.00 for recovery of the filing fee, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$6,500.00, comprised of outstanding rent of \$6,400.00 through July, 2019, and the \$100.00 filing fee paid by the landlord for this application.

At the landlord's request, I direct the landlord to deduct the tenant's security deposit they are holding, in the amount of \$800.00, in partial satisfaction of their monetary award of \$6,500.00.

I grant the landlord a monetary order pursuant to section 67 of the Act for the balance due, for the amount left owing of \$5,700.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent and the filing fee has been granted.

The landlord is directed to retain the tenant's security deposit of \$800.00 in partial satisfaction of their monetary award of \$6,500.00, and is granted a monetary order for the balance due in the amount of \$5,700.00.

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: July 5, 2019

Residential Tenancy Branch