



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR 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 June 7, 2019, which should be read in conjunction with this decision.

At the participatory hearing, the landlord and his interpreter 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 submitted that the tenant was served by registered mail with the Direct Request documents on June 12, 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.

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 a tenancy began on October 15, 2019, between a named realty corporation and someone named KYK, in care of or on behalf of a named BC Ltd Company. The landlord here, BYZ, said he was the owner of the named realty corporation.

From the evidence submitted at the hearing, it appears that the listed tenant/respondent, JK, is KYK listed on the written tenancy agreement, with an apparent anglicized given name. The landlord submitted that JK was the owner or associated with the named BC Ltd Company.

Additionally, from the evidence provided at the hearing, the listed tenant/respondent, RH, was listed as an occupant on the written tenancy agreement.

The landlord submitted that the named company on the written tenancy agreement, the BC Ltd Company folded and JK vacated the premises. RH stayed on in the rental unit and began paying the monthly rent of \$2,700.00, as per the tenancy agreement between the named BC Ltd Company and the named realty corporation.

The landlord submitted that the tenant was issued a Notice of Rent Increase which shows that the monthly rent was increased to \$2,808.00.00 as of November 1, 2018.

The landlord gave evidence that on May 4, 2019, the tenant, RH, was served with the Notice, by personally handing the document to RH, listing unpaid rent of \$8,474.00 as of May 1, 2019. The effective vacancy date listed on the Notice was May 14, 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 and did not pay the amount listed on the Notice; however, the landlord submitted that the tenant did make a payment of \$2,000.00 on May 15, 2019.

The landlord submitted further that the tenant did not pay rent for the months of June and July, 2019.

The landlord has requested to increase their monetary claim to include unpaid rent for the months of June and July 2019, in the amount of \$2,808.00 each.

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.

In the case before me, I accept that although the tenant/respondent RH was not an original tenant under the written tenancy agreement provided by the landlord, I find that a tenancy formed between this landlord and RH when the original tenant vacated the rental unit.

I therefore have excluded the original listed tenant/respondent, JK, from any further consideration in this matter.

I find the undisputed evidence is that when the original tenant vacated, the parties here, BYZ, landlord, and RH agreed upon a monthly rent of \$2,700.00.

I additionally accept the undisputed evidence of the landlord and find that the monthly rent was increased to \$2,808.00 beginning in November 2018.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, 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 14, 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 \$2,808.00 each.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of \$12,090.00 in unpaid rent through July 2019, due under the tenancy agreement. The amount is calculated using the amount of unpaid rent listed on the Notice, \$8,474.00, plus rent of \$2,808 for June 2019, rent of \$2,808.00 for July 2019, less the amount paid on May 15, 2019, \$2,000.00.

I grant the landlord a monetary award in the amount \$12,090.00, 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 \$12,190.00, comprised of outstanding rent of \$12,090.00 through July, 2019, and the \$100.00 filing fee paid by the landlord for this application.

I grant the landlord a monetary order pursuant to section 67 of the Act for the amount owing by the tenant to the landlord in the amount of \$12,190.00.

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.

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 23, 2019

Residential Tenancy Branch