



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT COMMISSION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL

Introduction

On July 16, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for unpaid rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*.

D.L. attended the hearing as an agent for the Landlord. The Tenant attended the hearing as well. All in attendance provided a solemn affirmation.

D.L. advised that the Notice of Hearing and evidence package was served to the Tenants by registered mail on July 17, 2019 and the Tenant confirmed receipt of this package. Based on this undisputed testimony, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing and evidence package.

D.L. also stated that he served some additional evidence to the Tenants by hand on August 29, 2019 and the Tenant confirmed that they received this document. As this additional evidence was served according to the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

The Tenant advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

D.L. stated that the most current tenancy started on February 1, 2018 and that core rent was currently established at \$1,063.00 per month, due on the first of each month, but there is a heat rebate which brings the rent owing down to \$1,004.00 per month. However, based on a prior Repayment Agreement of July 26, 2017, \$100.00 per month has been agreed by the Tenants to be paid on top of current rent. Therefore, rent owing per month is \$1,104.00. A security deposit was not paid. He submitted a copy of the tenancy agreement and Repayment Agreement as documentary evidence.

He advised that the Tenants have had a long history of non-payment of rent, so multiple Repayment Agreements were made, all of which have not been complied with. He stated that the Notice was served to the Tenants by hand on July 8, 2019 as the Tenants have not paid the rent in full. The Notice indicated that \$5,925.00 was outstanding on July 1, 2019 and that the effective end date of the Notice was July 21, 2019.

The Landlord is seeking a monetary award in the amount of **\$5,771.00** for rent arrears including August 2019 rent, less what the Tenant has paid as per the Tenant Statement rent ledger that was submitted as documentary evidence.

The Tenant advised that his son's rent payments from the Ministry were cancelled, creating the shortfall in rent. However, he contradictorily stated that rent has been paid in full every month. He did not have proof of this. He also acknowledged that there was a Repayment Agreement, that he was "willing to pay" the arrears, and that he "can pay for whatever is reasonable."

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were served the Notice on July 8, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that "*If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*"

As the fifth day fell on Saturday July 13, 2019, the Tenants must have paid the rent in full by this date or disputed the Notice by July 15, 2019 at the latest. The undisputed evidence is that the Tenants did not pay the rent or dispute the Notice. There is no evidence before me that permitted the Tenants to withhold the rent.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenants being served the Notice. Moreover, I am satisfied from the evidence provided by the Landlord that rent was

outstanding, and the Tenant did not establish that they had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenants did not dispute the Notice. Ultimately, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*.

I also find that the Landlord is entitled to a monetary award, and I grant the Landlord a Monetary Order in the amount of **\$5,771.00** for the rent arrears including August 2019 rent.

Conclusion

I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenants. Should the Tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of **\$5,771.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: September 13, 2019

Residential Tenancy Branch