



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"). The Landlord applied for an order of possession of the rental unit and to recover unpaid rent of \$1,350.00 due on June 1, 2019, further to having issued a 10 Day Notice to End the Tenancy for Unpaid Rent ("10 Day Notice"). The Landlord also applied to recover the \$100.00 cost of their filing fee.

The Landlord and an agent for the Landlord, J.D. (the "Agent") appeared at the teleconference hearing and gave affirmed testimony, but no one attended for the Tenant. The teleconference hearing was open for thirty minutes, and no one called in on the Tenant's behalf. As a result, I considered the Landlord's service of the Application, Notice of Hearing and documentary evidence on the Tenant.

The Landlord said that he served his Application and documentary evidence on the Tenant via registered mail on July 19, 2019. The Agent provided a Canada Post tracking number for this package. Pursuant to section 90 of the Act, I find that this package was deemed served on the Tenant on July 24, 2019.

The Agent said that the Tenant was home at the time of the hearing, as the rental unit is on the same property as the Landlord's residence, and the lights were on, and the Tenant's only motor vehicle was parked there.

I explained the hearing process to the Landlord and the Agent and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord and Agent were given the opportunity to provide their affirmed evidence orally and to ask questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Landlord said there was an oral tenancy agreement between the Parties, not a written agreement. The Landlord said that the periodic tenancy began on November 1, 2016, with a monthly rent of \$1,150.00 due on the first day of each month. The Landlord said that the rent had risen to \$1,350.00 by the end of the tenancy, at the agreement of the Parties. The Landlord said that the Tenant paid a security deposit of \$575.00, and no pet damage deposit.

The Landlord said that on March 29, 2019, the Parties signed a mutual agreement to end the tenancy on May 30, 2019 ("Mutual Agreement"). The Landlord said the Tenant was not required to pay rent for April or May 2019, based on the Mutual Agreement that he would vacate the rental unit by May 30, 2019; however, the Landlord said that the Tenant has still not vacated the rental unit. The Landlord submitted a copy of the Mutual Agreement, which I have reviewed.

The Landlord said he issued the 10 Day Notice to the Tenant, because the Tenant owed the Landlord \$1,350.00 in unpaid rent as of June 2, 2019. The Landlord said he served the Tenant with the 10 Day Notice by posting it on the rental unit door on June 8, 2019, and by mailing it to the Tenant, as well. The Landlord submitted a proof of service form to confirm this service of posting it on the door.

In the hearing, the Landlord requested that his claim for compensation for unpaid rent be increased from \$1,350.00 for one month to \$8,100.00 for the six months of unpaid rent owing from April 2019 through to September 2019, since the Tenant breached the Mutual Agreement, and has continued to live in the rental unit without paying any rent since March 2019.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

. . .

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

[emphasis added]

The undisputed evidence before me is that the Tenant has not paid any rent since March 2019, although he has continued to live in the rental unit to the date of the hearing. Further, he did not apply for dispute resolution to cancel the 10 Day Notice. As such, according to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and should have vacated the rental unit by that date.

I reviewed all relevant documentary evidence and oral testimony before me, and pursuant to sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on June 11, 2019, three days after it was posted on the rental unit door.

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 the Act, the regulations or

the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. In the hearing, the Landlord said that he was owed \$1,350.00 in unpaid rent as of June 2, 2019, but that the Tenant now owes him \$8,100.00 in outstanding rent, given the Tenant's breach of the Mutual Agreement.

I find that the Tenant breached the Mutual Agreement, which I now cancel. Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application for dispute resolution to correct the amount of the Monetary Order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, I find it reasonable to amend the amount of the Monetary Order sought by the Landlord from the Tenant from \$1,350.00 to \$8,100.00.

The 10 Day Notice was signed, dated, had the rental unit address and the effective vacancy date of June 18, 2019. I find that the effective vacancy date is incorrect, as it should have been 10 days after the 10 Day Notice was deemed served on the Tenant. As noted above, the 10 Day Notice was deemed served on the Tenant on June 11, 2019; therefore, pursuant to section 53 of the Act, the vacancy effective date is automatically corrected to June 21, 2019. I find that the 10 Day Notice is in the approved form and is valid as to form and content, pursuant to section 52 of the Act.

The Tenant did not attend the hearing to provide testimony as to why the rent was not paid, and he did not provide any documentary evidence establishing that he had a right under the Act to deduct all or a portion of the rent owed for the six months prior to the September 10, 2019 hearing. Therefore, the Landlord's Application for an order of possession is granted, pursuant to section 55 of the Act. As the effective date of the 10 Day Notice has passed, and the undisputed evidence before me is that the Tenant has not paid rent since March 2019, the Order of Possession will be effective two days after service of the Order on the Tenant.

The Tenant breached the Mutual Agreement by not vacating the unit, as agreed. As a result, I find that the Tenant has not established that he had a right to withhold rent from April 1, 2019 through to and including September 1, 2019. Accordingly, and pursuant to section 67 of the Act, I award the Landlord with recovery of \$8,100.00 in unpaid rent from the Tenant. Since the Landlord was successful in this Application, I also award him recovery of the \$100.00 Application filing fee.

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit of \$575.00 in partial satisfaction of the Landlord's monetary claim. I, therefore, grant the Landlord a Monetary Order of **\$7,625.00** against the Tenant for the outstanding amount owing.

Conclusion

The Tenant has not paid rent for the last six months, so the Landlord's Application for an Order of Possession is granted. Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective **two days after service of this Order** on the Tenant.

The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, it may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from Tenant.

I found that the Tenant owes the Landlord \$8,100.00 in outstanding rent and I award the Landlord a Monetary Order against the Tenant in this amount. I also awarded the Landlord recovery of his \$100.00 Application filing fee. After deducting the Tenant's \$575.00 security deposit, I award the Landlord with a monetary order of **\$7,625.00**. This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court .

This decision is final and binding on the Parties, unless otherwise provided 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 *Residential Tenancy Act*.

Dated: September 11, 2019

Residential Tenancy Branch