



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 dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory based on the Interim Decision by an adjudicator with the Residential Tenancy Branch ("RTB"), dated August 30, 2109, which should be read in conjunction with this decision.

At the participatory hearing, the landlord attended the teleconference hearing. The tenant did not attend the hearing. During the hearing the landlord was given the opportunity to provide her 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 the Notices of Reconvened Hearing the interim decision, and all other required documents by personal service on September 5, 2019. The landlord said the tenant would not take the documents; however, she placed them at his hand, they touched his hand, and they dropped to the ground.

The landlord submitted that she originally served the Notice of a Dispute Resolution Hearing and all Direct Request documents to the tenant by registered mail on August

28, 2019. The landlord submitted the copy of the Canada Post receipt showing the tracking number.

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

Preliminary Issue

The landlord originally named another tenant, DH, who did not sign the tenancy agreement. In response to my inquiry, the landlord said that DH was the minor child of the tenant, but that she was informed by staff at the RTB that she should serve all parties living in the rental unit.

I find this not to be the case, and as well, DH, as a minor child, neither signed the tenancy agreement nor had the legal capacity to do so. I have therefore excluded him from any further consideration in this proceeding.

Additionally, after filing for dispute resolution seeking an order of possession of the rental unit based upon her original Notice, the landlord filed an amended application seeking an order of possession of the rental unit due to a One Month Notice to End Tenancy for Cause (the "One Month Notice").

I find that this application was scheduled for an expedited hearing based upon a 10 Day Notice to End Tenancy for Unpaid Rent only and it is not appropriate to amend to include other Notices.

I have therefore excluded that portion of the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of 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 April 1, 2018, monthly rent payable by the tenant was \$1,200.00, due on the 27th

day of the month, and a security deposit of \$600.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on August 19, 2019, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$3,750.00 as of July 30, 2019. The effective vacancy date listed on the Notice was September 1, 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 August, September and October, 2019.

The landlord has requested to increase her monetary claim of \$3,750.00 to include unpaid rent for the months of August, September, and October 2019, in the amount of \$1,200.00 each.

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

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

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.

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 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, September 1, 2019.

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

I grant the landlord a final, legally binding order of possession of 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.

Monetary claim-

I find it reasonable that the landlord be allowed to amend her application to account for further unpaid rent as the tenant has yet to vacate the rental unit. I therefore include a claim for unpaid rent for August, September, and October, 2019, in the amount of \$1,200.00 each, or a total of \$3,600.00, for consideration in this application.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of \$3,750.00 as shown on the Notice and further unpaid rent of \$3,600.00 through October 2019, due under the tenancy agreement. I grant the landlord a monetary award the amount of \$7,350.00, pursuant to section 67 of the Act.

I also find the landlord is entitled to recover the filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$7,450.00, comprised of outstanding rent of \$7,350.00 through October, 2019, and the \$100.00 filing fee paid by the landlord for this application.

At the landlord's request, I direct her to retain the tenant's security deposit of \$600.00 in partial satisfaction of her monetary award of \$7,450.00.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$6,850.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary 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 subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit, 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: October 28, 2019

Residential Tenancy Branch