



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") for an order of possession further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated September 11, 2019 ("10 Day Notice"); for a monetary claim of \$11,326.48.00 for unpaid rent and utilities, and to recover the cost of his \$100.00 Application filing fee.

The Landlord and an agent for the Landlord, K.C. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony; however, no one attended on behalf of the Tenant. The teleconference phone line remained open for over 27 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and the Agent, who indicated they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me were the Landlord and the Agent.

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

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing by the Landlord. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by UPS registered mail, sent on September 20, 2019. The Landlord

provided UPS receipts for this package as evidence of service. The Landlord and Agent said that the package was returned by UPS as “refused” by the Tenant.

According to RTB Policy Guideline #12, “Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.” Accordingly, I find that the Landlord served the Notice of Hearing on the Tenant on September 25, 2019.

On reviewing the tenancy application form and the tenancy agreement, I noted that the Tenant’s name was misspelled in the Application for dispute resolution. As such, I have amended the Respondent’s name in the Application, pursuant to section 64(3)(c) and Rule 4.2.

Preliminary and Procedural Matters

The Landlord provided his email address in the Application documents and confirmed it at the outset of the hearing. He said he did not have an email address for the Tenant. The Landlord also confirmed his understanding that the Decision would be emailed to him and mailed to the Tenant at the rental unit, and that any Orders would be sent to the appropriate Party.

The Landlord applied to recover \$6,300.00 in unpaid rent and utilities; however, in the hearing, he said the debt owing to him by the Tenant has grown to \$11,326.48.

Pursuant to Rule 4.2 and section 64(3)(c) of the Act, I amend the Application 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, therefore, he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the Landlord’s error in the original amount claimed, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$6,300.00 to \$11,326.48.

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 confirmed the evidence in the tenancy agreement he submitted, that the fixed term tenancy began on December 6, 2017, and ran to December 31, 2018 and was then on a month-to-month basis. The Landlord said that the monthly rent is \$2,100.00, due on the first day of each month, and that the Tenant paid a security deposit of \$1,050.00 and no pet damage deposit. The Landlord said he still holds the security deposit.

In the hearing, the Landlord said that the Tenant regularly pays his rent late – most often in the middle of the month. The Landlord said he has tried to give the Tenant some leeway, but the Tenant has not paid rent since July 2019. The Landlord said that as a result, he served the Tenant with a 10 Day Notice for not having paid \$2,100.00 due on August 1, 2019. The 10 Day Notice was signed, dated September 11, 2019, had the rental unit address, was served by posting it on the door on September 11, 2019, and had an effective vacancy date of September 20, 2019, corrected to September 24, 2019, pursuant to section 53 of the Act.

The Landlord said that the Tenant has not paid any rent for August, September, October or November 2019, and that he is seeking a monetary order to recover this debt. The Landlord said he is also seeking to recover unpaid rent for December 2019, as he anticipates that he will not be able to rent it out, given the current tenancy. In addition, the Landlord submitted evidence indicating that he is also seeking unpaid utilities from the Tenant in the amount of \$248.35. Further, the Landlord seeks an Order of Possession for the Tenant's ongoing failure to pay rent.

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(5)** of the Act states that if a tenant who has received a 10 Day Notice does not pay his rent or apply for dispute resolution within 5 days after the date the tenant receives the notice, 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 by that date.

As there is no evidence before me that the Tenant paid any rent or disputed the 10 Day

Notice, I find that he is conclusively presumed under section 46(5) of the Act to have accepted the 10 Day Notice; I find that the tenancy, therefore, ended on September 24, 2019. As a result, I find that the Tenant is overholding the rental unit and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2)(b) of the Act. As the corrected effective date has passed and the Landlord testified that rent for November 2019 has not been paid, the Order of Possession will therefore be effective two days after service on the Tenant.

I also find that the Tenant owes the Landlord four months of unpaid rent of \$2,100.00 per month, for a total owing of \$8,400.00. The Landlord is not entitled to recover rent for December 2019, as this claim is premature, as it is not owing yet. The Landlord may find another tenant quickly, therefore, it would be inappropriate to award the Landlord recovery of this amount from the departing Tenant. In addition, I find that the Landlord has not demonstrated that he mitigated the possibility of not having a tenant in December, by advertising for a new tenant.

In terms of the unpaid utilities the Landlord said the Tenant owes him, the Landlord did not point to a clause in the tenancy agreement that requires the Tenant to pay utilities. Further, the Landlord did not provide sufficient evidence indicating that he made a written demand of the Tenant for utilities owing, and gave him 30 days to pay, pursuant to section 46(6). As such, I will not be treating the utilities as unpaid rent pursuant to the Act. I dismiss this claim with leave to reapply.

The Landlord is primarily successful in his Application; therefore, I find it appropriate to award him recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act. I grant the Landlord a monetary award of \$8,500.00, pursuant to section 67 of the Act.

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 \$1050.00 in partial satisfaction of the Landlord's monetary claim. I authorized the Landlord to retain from the Tenant's security deposit and I award the Landlord a Monetary Order of **\$7,450.00**.

Conclusion

The Landlord is predominantly successful in his Application, as the Tenant has failed to pay him four months' rent owing.

I grant an Order of Possession to the Landlord 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, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I award the Landlord with \$8,400.00 from the Tenant for outstanding rent owing, as well as recovery of the \$100.00 Application filing fee. I authorize the Landlord to retain the Tenant's \$1050.00 security deposit in partial recovery of this award. Further, I grant the Landlord a Monetary Order in the amount of **\$7,450.00** for recovery of the remaining award amount. 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, 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 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: November 27, 2019

Residential Tenancy Branch