



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Preliminary matter

This application was originally made under the Direct Request process which is an Ex-Parte process based on paper submissions only. The Landlord was successful in obtaining an Order of Possession and a monetary order for \$450.00 both dated November 7, 2019. The Tenant applied for a Review Consideration and on November 15, 2019 the Tenant was successful in obtaining a Review Hearing. Consequently the application was scheduled for a participatory hearing on today's date.

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order for unpaid rent and to recover the filing fee for this proceeding

The Landlord's agent said he served the Tenant's agent with the Application and Notice of Hearing (the "hearing package") by registered mail on November 1, 2019. The Tenant was out of the country and therefore did not receive the application and Hearing Package. The Tenant's agent then made a review consideration application on November 12, 2019 and was successful in obtaining the participatory hearing of today. The Tenant's agent served the Landlord the review consideration Hearing Package on December 10, 2019. Based on the evidence of the Tenant's agent and Landlord's agent, I find that the both parties have been served as required by s. 89 of the Act and the hearing proceeded with both parties represented.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

Background and Evidence

This tenancy started in February 1, 2013 as a month to month tenancy. Rent is \$1,350.00 per month payable on the 1st day of each month. The Tenant pay a security deposit of \$650.00 at the start of the tenancy.

The Landlord's agent said that the Tenant did not pay \$1,350.00 of rent for October 2019 when it was due and as a result, on October 3, 2019, he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 3, 2019 on the door of the Tenant's unit. The Landlord's agent said the Tenant's agent paid \$1,000.00 on October 17, 2019 and the balance of the unpaid rent \$350.00 at the start of November 2019. The Landlord's agent continued to say he issues a rent receipt stating the payment was for "use and occupancy only" so that the Tenant's agent understood the Landlord was not re-instating the tenancy. Further the Landlord said they have issued three 10 Day Notices for unpaid rent in 2019 and the Tenant's agent has been late with the rent payment many times and a number of cheques the Tenant's agent has given to the Landlord have been NSF. The Landlord's agent said the January 2020 rent of \$1,350.00 is unpaid as well and the Landlord's agent is requesting a monetary order for this amount. The Landlord's agent continued to say if he is successful in his application he is requesting an Order of Possession for the end of January 2020.

The Tenant's agent said he has paid the unpaid rent for October 2019 on October 17, 2019 in the amount of \$1,000.00 and the balance of \$350.00 in November 2019. The Tenant said he had an agreement with the Landlord's agent to delay the rent payments because October 2019 was a difficult month for him financially.

The Landlord's agent said there was no agreement for a late rent payment for October 2019 and that is why he issued the 10 Day Notice to End Tenancy on October 3, 2019.

The Tenant's agent continued to say in January 2018 the Landlord and he wrote an agreement changing the rent payment date from the first of the month to the tenth of each month. Consequently the Tenant's agent believes the 10 Day Notices for Unpaid rent issued on the third day of each month are not valid.

The Landlord said the agreement was made but the payments have been moved back to the first day of each month. The Landlord said this was confirmed by phone call to the Tenant's agent in 2019.

The Tenant said he did not agree to move the payments back to the first day of each month and he believes the rent is due on the 10th day of each month.

The Landlord said the tenancy agreement states rent is due on the first day of each month and that is why the Landlord has issued 10 Day Notice to End Tenancy for Unpaid rent on the 3 day of the month when the rent was not paid.

The Tenant's agent was asked why he did not submit the letter changing the rent payment date from the first to the tenth into evidence. The Tenant's agent said he did not have time to submit it.

The Tenant's agent continued to say the Tenant has not lived in the unit since 2017 as she when back to her home country to take care of her sick mother. The Tenant's agent said he does not open the Tenant's personal mail, so that is why he did not respond to the Landlord's application to end the tenancy.

The Landlord's agent said he is also seeking to recover the \$100.00 filing fee for this proceeding.

The Tenant's agent said there is four points he wants to make in closing:

1. The Tenant is not in the country and he does not open her personal mail so he was unable to respond to the Landlord's Direct Request Application.
2. He believes the payment date is the 10th not the 1st so he believes the 10 day Notices for unpaid rent are not valid.
3. The Tenant's agent believes the Landlord's agent is putting 10 Day Notices to End Tenancy on his door to harass him and end the tenancy so that the Landlord can increase the rent.
4. The October 2019 payment was late but it was paid by the start of November and since this is a long standing tenancy there should be some lenience.

The Landlord's agent said in closing that the Landlord has been very lenient as there have been numerous NSF cheques and late rent payments and the Landlord is not willing to tolerate late payment any more. Further the Landlord's agent said the rent payment date is the first of the month as in the tenancy agreement. In addition the Landlord's agent said the Tenant's agent has become difficult to deal with and the Landlord no longer trusts the Tenant's agent to pay the rent on time. The Landlord's agent requested an Order of Possession for January 31, 2020 and a monetary order for the January rent of \$1,350.00 and the \$100.00 filing fee.

Analysis

As there is no corroborative evidence to prove the payment date was changed from the 1st of each month to the 10th of each month, I accept the Landlord's agent's affirmed testimony that the rent payment date for 2019 was the first of each month.

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant or the Tenant's agent is deemed to have received the Notice to End Tenancy three days after it was posted on the door of the rental unit, or on October 6, 2019. Consequently, the Tenant's agent would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 11, 2019.

I find that the Tenant's agent has not paid the overdue rent by October 11, 2019 and has not applied for dispute resolution. Consequently, I find pursuant to s. 55(2) (b) of the Act that the Landlord is entitled to an Order of Possession to take effect January 31, 2020.

I also find that the Landlord is entitled to recover unpaid rent for January 2020 in the amount of \$1,350.00 and the filing fee of \$100.00 for a total of \$1,450.00.

Further I order the Order of Possession dated November 7, 2019 and the monetary order dated November 7, 2019 are both canceled and replaced by the orders accompanying this decision which are dated January 7, 2020.

Conclusion

An Order of Possession effective January 31, 2020 and a Monetary Order in the amount of \$1,450.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant's agent: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: January 07, 2020

Residential Tenancy Branch