



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession for Unpaid Rent or Utilities and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on November 23, 2019 the Dispute Resolution Package and evidence the Landlords submitted to the Residential Tenancy Branch on November 14, 2019 was personally served to the Tenant. The Tenant acknowledged receipt of these documents, and the evidence was accepted as evidence for these proceedings.

On December 28, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant on December 29, 2019. The Tenant acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On January 03, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the female Landlord on January 05, 2019. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in February of 2019;
- they did not have a written tenancy agreement;
- the Tenant agreed to pay monthly rent of \$350.00 by the first day of each month;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has a declared effective date of October 14, 2019, was posted on the door of the rental unit on October 04, 2019; and
- the Tenant did not file an Application for Dispute Resolution to dispute this Notice to End Tenancy.

The Landlord stated that the parties agreed the rent would be reduced in exchange for work completed on the trailer. He stated that the understanding was that a rent reduction would not be granted until the Landlord approved the project and the parties agreed on the amount of the related rent reduction. He stated that the parties did not agree on any specific rent reduction.

The Tenant stated prior to the start of the tenancy the Landlord agreed to pay him \$20.00 per hour and that they agreed upon various projects that would be completed on the property. He stated that they discussed additional projects in April of 2019.

The Landlord stated that the Tenant currently owes \$3,150.00 in rent. The Landlord has not applied for a monetary Order of the outstanding rent.

The Tenant stated that he currently owes \$1,197.18. He stated that he has only paid \$350.00 in rent during this tenancy and that the majority of his rent has been reduced in compensation for labor. The Tenant submitted documentation of hours worked and related expenses.

The Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door on October 04, 2019. The Tenant stated that he received this Notice on October 04, 2019.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$350.00 by the first day of each month and that the Tenant has not paid rent all of the rent that is currently due.

I find that the Tenant has submitted insufficient evidence to establish that he had the right to withhold any portion of his rent in exchange for labour. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate his testimony that he had the right to withhold rent in exchange for labour or that refutes the Landlord's testimony that he did not agree on a specific rent reduction in exchange for labor. Although I accept that the Tenant believed he had the right to withhold rent, I find that the Landlord is not of the same mind.

As the Tenant has submitted insufficient evidence to establish that he had the right to withhold any portion of his rent in exchange for labour, I find that the Tenant still owed rent on October 01, 2019.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that on October 04, 2019 the Tenant received the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, which was posted at the rental unit on October 04, 2019.

Section 46(4) of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. Section 46(5) of the *Act* stipulates 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.

On the basis of the undisputed evidence I find that the Tenant did not exercise either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenant**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim of \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution, and I grant the Landlord a monetary Order in this amount. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: January 13, 2020

Residential Tenancy Branch