



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord, a monetary order for unpaid rent, for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

The landlord attended the teleconference hearing. The tenant did not attend 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 submitted evidence that the tenant was served by registered mail with the application and hearing documents on December 4, 2019. The landlord submitted a copy of the Canada Post receipt showing the tracking number of the registered mail, which is reflected on the style of cause page in this Decision.

Based on the landlord's undisputed evidence, I accept that the tenant was sufficiently served notice of this hearing as required by the Act.

During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the Decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, an order for monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord did not provide a written tenancy agreement. In response to my inquiry, the landlord said that the tenant refused to sign one before moving into the rental unit on or about October 27, 2019 and has yet to sign one.

The landlord said that the agreed upon monthly rent was \$2,600.00 and that the tenant refused to pay a security deposit.

The landlord gave undisputed evidence the tenant failed to pay the monthly rent on November 1, 2019.

The landlords submitted that on November 2, 2019, the tenant was served with a Notice, by personal service, listing unpaid rent of \$700.00 owed as of November 1, 2019. The effective move-out date was November 12, 2019.

The landlord provided a copy of the Notice and a Proof of Service of the Notice signed by the landlord's witness.

The landlord asserted that since the issuance of the Notice, the tenant remains in the rental unit and has not paid any rent.

In response to my inquiry, the landlord explained that although the agreed upon monthly rent was \$2,600.00, he only listed \$700.00 on the Notice as he was assessing a daily rate of \$100.00, for the five days in October and the two days in November that he failed to pay rent.

Additionally, the landlord's monetary claim as shown in his documentary evidence requested an amount of \$3,000.00 for unpaid rent for the months of November, December, 2019, and January 2020, each, for a total of \$9,000.00.

The landlord explained why he allocated \$100.00 per day for rent, which I find was not clear enough to explain the earlier testimony of the monthly rent being \$2,600.00.

The landlord also testified that he received a call from the strata company managing the building a few days before the hearing that the tenant was using the rental unit as an Air BNB business, which is prohibited by the strata rules.

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

Analysis

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 comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

The Notice informed the tenant that he had five (5) days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch (RTB) to dispute the Notice or to pay the rent in full; otherwise the tenant is presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

I find the landlord submitted sufficient evidence to prove that the tenant was served the Notice, that the tenant did not pay the listed outstanding rent or file an application in dispute of the Notice within 5 days of service. I find the tenant is therefore 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, November 12, 2019.

Therefore, pursuant to section 55(2)(b) of the Act, I find that the landlord is entitled to and I grant an order of possession for the rental unit effective 2 days after service of the order upon the tenant. 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. The tenant is advised that costs of such enforcement, such as bailiff fees, are recoverable from the tenant.

As to the landlord's monetary claim, I find the tenant owed some rent when the Notice was issued, but find the landlord submitted insufficient evidence to support what amount was owed in unpaid rent. The landlord's monetary claim here was inconsistent with his testimony.

I therefore dismiss the landlord's monetary claim, with leave to reapply.

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

I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of \$100.00.

Conclusion

The landlord's application for an order of possession of the rental unit and the filing fee has been granted.

The landlord's monetary claim for unpaid rent is dismissed, with leave to reapply.

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 24, 2020

Residential Tenancy Branch