Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Richmond Kiwanis Senior Citizens Housing Society c/o AWM-Alliance Real Estate Group Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   OPR, MNR

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord; and
- a monetary order for unpaid rent.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated January 20, 2020, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agent (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 testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on January 23, 2020. The landlord supplied the registered mail receipt and proof of service. The tracking number for the registered mail is located on the style of cause page of this decision.

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

16, 2020. 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.

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 hearing.

Preliminary Matters-

After reviewing the evidence, it was determined that I did not have a copy of the Notice at issue in this application, although I did have a copy of a Notice that was issued to the tenant in June 2019.

The landlord said that the Notice at issue was submitted to the Residential Tenancy Branch (RTB) along with the rest of their evidence.

I informed the landlord he could provide me a copy of the Notice from December 2019, after the hearing. I had the landlord read from his copy of the Notice and I note that the information he provided at the hearing matched the contents of the Notice.

I also note that the landlord supplied the Notice immediately after the hearing, along with proof of service.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent and to a monetary order for unpaid rent?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on May 1, 2019, monthly rent payable by the tenant is $827.75, due on the 1st day of the month, and a security deposit of $413.88 was paid by the tenant at the beginning of the tenancy.

The landlord submitted that on December 16, 2019, the tenant was served with the Notice, by attaching it to the tenant's door and by registered mail, listing unpaid rent of $2,236.25 as of December 1, 2019. The effective vacancy date listed on the Notice was December 26, 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 and did not pay the amount listed on the Notice. In addition, although the tenant has made monthly rent payments since the Notice was issued, he was issued receipts on a "for use and occupancy" basis. The landlord said it was made clear to the tenant that his monthly rent payments did not reinstate the tenancy.

The landlord submitted that as of the day of the hearing, the tenant owed unpaid rent of $2,269.50.

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

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.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Under section 90 of the Act, a document served by attachment to the door or other conspicuous place is deemed received three days later. Here, the Notice was attached on December 16, 2019, and deemed received on December 19, 2019.

In this case, the landlord listed an effective move-out date of December 26, 2019 on the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date is December 29, 2019, 10 days after the tenant was deemed to have received Notice on December 19, 2019.

I 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, December 29, 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. The tenant is advised that costs of such enforcement, such as bailiff fees, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their application to account for further unpaid rent as the tenant has yet to vacate the rental unit. I therefore amended the landlord's application to a total monetary claim of $2,269.50.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of unpaid rent of $2,269.50, due under the tenancy agreement. I find the landlord has established a monetary claim of $2,269.50.

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 $2,269.50.

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 and a monetary order for unpaid rent 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: March 24, 2020

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Residential Tenancy Branch