Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPRM-DR FFL

Introduction

This matter originally proceeded by way of a Direct Request proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the Act) and dealt with an Application for Dispute Resolution (application) by the landlord for an order of possession for unpaid rent and a monetary order for unpaid rent. On March 16, 2020, an adjudicator adjourned the matter to a participatory hearing which was held on this date, Monday, April 20, 2020 at 1:30 p.m. Pacific Time.

The landlord attended the teleconference as scheduled, while the tenant called into the hearing 9.5 minutes late. Both parties provided affirmed testimony. The landlord also presented their documentary evidence prior to the tenant calling into the hearing. As the tenant called into the hearing late, the hearing was not restarted and continued as per Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, which state:

> 7.1 Commencement of the dispute resolution hearing.
> The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.
>
> 7.3 Consequences of not attending the hearing.
> If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant confirmed that they received the landlord's documentary evidence and had the opportunity to review that evidence prior to the hearing. The tenant confirmed that they did not submit any documentary evidence in response to the landlord's application.

Preliminary and Procedural Matters

The parties confirmed their email addresses during the hearing and stated that they understood that the decision would be emailed to them. The landlord will have any applicable orders emailed to them for service on the tenant.

In addition, the landlord testified that in addition to the rent owed for November, January and February 2020, the tenant subsequently failed to pay $1,000.00 of March 2020 rent, and all of April 2020 rent. The tenant testified that they continue to occupy the rental unit. At the outset of the hearing, the landlord requested to amend their application for the additional rent owed, which I find does not prejudice the respondent tenant as the tenant would be aware that rent is due pursuant to the tenancy agreement. As a result, I amend the landlord's application to $9,000.00 in rent arrears before the filing fee is applied. The landlord also requested to offset any amount with the tenant's security deposit, which I have the authority to do under section 38 of the Act if the tenancy is ending.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent under the Act?
- Is the landlord entitled to a monetary order for unpaid rent under the Act?
- Is the landlord entitled to the filing fee under the Act?
- Should the security deposit be offset from any amount owed under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2019. Monthly rent was $2,000.00 per month and was due on the first day of each month. The landlord applied for dispute resolution through the Direct Request process after three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities all dated February 3, 2020 (10 Day Notices) were served on tenant by personally serving the tenant. The effective vacancy date listed on the 10 Day Notices all indicate February 14, 2020. The landlord testified that all three notices were served on the same date and that the tenant did not pay rent as required or dispute the 10 Day Notices. The tenant claims that the landlord said not to worry about it, and that rent was paid by the Ministry, so the tenant felt that rent was all caught up. The tenant later changed their testimony to state that they don't know what is owing and that it was confusing because the Ministry was involved.

The tenant mentioned that they could get paperwork from the Ministry to state that all rent was paid; however, no such paperwork was submitted in evidence for my consideration.

The landlord stated that the tenant only paid $1,000.00 in rent for March 2020, and still owes $2,000.00 for the months of November 2019, January 2020, February 2020, and April 2020. The landlord confirmed that a very late November 2019 rent payment was applied to December 2019 rent, which is why a 10 Day Notice was not issued for December 2019.

The tenant testified that they would agree to an order of possession for April 30, 2020 as they were already in the midst of vacating the rental unit at the time of the hearing. In other words, if an order of possession is granted, the landlord was agreeable to April 30, 2020.

Analysis

Based on the documentary evidence from the landlord and the testimony provided by the landlord and tenant, and on the balance of probabilities, I find the following.

Order of Possession – Prior to the tenant joining the call, the landlord testified that the tenant failed to pay rent of $2,000.00 for November 2019, January 2020, February 2020 and April 2020, and that only $1,000.00 was paid for March 2020. The landlord also clarified that due to November 2019 rent being paid so late, it was applied to December 2019 instead, which is why a 10 Day Notice was not issued for December 2019. In addition, the landlord stated that the 10 Day Notice was served personally on the tenant on February 3, 2020.

Furthermore, I find the tenant has provided insufficient evidence to prove that the rent as claimed by the landlord as unpaid has been paid by the tenant. Although the tenant mentioned that they could obtain documents from the Ministry to support that rent was paid, the tenant provided no such evidence for my consideration and in terms of paying rent, the tenant has the onus to prove that rent was paid.

In addition, I have noted that the tenant did not dispute any of the three 10 Day Notices, which I find supports that they agreed that rent was not paid. Furthermore, I find the tenant's testimony to be vague as at one point the tenant stated they paid rent and later the tenant stated that they "did not know as it was confusing." Therefore, I prefer the landlord's testimony, which was consistent throughout the hearing and was not vague or

contradictory. I also find that the tenant had insufficient evidence to support that the landlord had mutually agreed to withdraw any of the three 10 Day Notices.

Pursuant to section 46(5) of the Act, when a tenant receives a 10 Day Notice and fails to dispute the 10 Day Notice or pay the full amount of rent owing within 5 days after receiving the 10 Day Notice, the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the effective vacancy date on the 10 Day Notice, which was February 14, 2020. Pursuant to section 55 of the Act, I grant the landlord an order of possession effective **April 30, 2020**. I have used that date as the landlord agreed to April 30, 2020, versus a two-day order of possession.

Monetary claim – Given the above, I am satisfied that the landlord has met the burden of proof and that the tenant has breached section 26 of the Act, which applies and states:

> **Rules about payment and non-payment of rent**
>
> 26(1) **A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act,** the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.
>
> [Emphasis added]

Given the above, I find the tenant has failed to pay rent as claimed and as follows:

> $2,000.00 rent owing for November 2019
> $2,000.00 rent owing for January 2020
> $2,000.00 rent owing for February 2020
> $1,000.00 rent owing for March 2020
> $2,000.00 rent owing for April 2020
> _____
>
> **$9,000.00** in total rent owing

As the landlord's application had merit, I grant the landlord the recovery of the **$100.00** filing fee pursuant to section 72 of the Act.

Given the above, I find the landlord has established a total monetary claim of **$9,100.00** in rent owing, plus the filing fee. Pursuant to section 38 of the Act, **I authorize** the landlord to retain the tenant's full **$500.00** security deposit in partial satisfaction of the

landlord's monetary claim. I grant the landlord a monetary order pursuant to sections 67 and 72 of the Act in the amount of **$8,600.00** for the balance owing by the tenant to the landlord.

I find the tenancy ended on February 14, 2020.

Conclusion

The landlord's application is fully successful.

I find the tenancy ended on February 14, 2020. The landlord has been granted an order of possession effective April 30, 2020, which must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of $9,100.00 in rent owing, plus the filing fee. The landlord is authorized to retain the tenant's full $500.00 security deposit in partial satisfaction of the landlord's monetary claim. I note the security deposit has accrued $0.00 during the tenancy. I grant the landlord a monetary order pursuant to sections 67 and 72 of the Act in the amount of $8,600.00 for the balance owing by the tenant to the landlord. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties. The order of possession and monetary order will be emailed to the landlord only for service on the tenant.

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: April 20, 2020

Residential Tenancy Branch