



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPUM-DR, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Direct Request Proceeding. An Application for Direct Request Proceeding cannot be processed unless there is a written tenancy agreement. As the Landlord declared there is no written tenancy agreement, this matter was scheduled to be considered at a participatory hearing. At the participatory hearing I considered the Landlord's application for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent and utilities, and to recover the fee for filing this Application.

The Agent for Landlord stated that on February 07, 2020 he personally served the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch to the Tenant. In the absence of evidence to the contrary, I find that these documents have been served to the Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

As the aforementioned documents were properly served to the Tenant, the hearing proceeded in the absence of the Tenant and the evidence was accepted as evidence for these proceedings.

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

Preliminary Matter

The Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from February, March, and April of 2020. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or unpaid utilities?

Background and Evidence

The Landlord stated that:

- the Tenant was required to pay monthly rent of \$500.00 by the first day of each month;
- the Tenant was required to pay for hydro consumption during the tenancy, which she paid directly to the Landlord;
- the Tenant has not paid any portion of the two hydro bills submitted in evidence, which total \$194.48;
- the Tenant did not pay any rent for any period after October 31, 2019;
- the Tenant is still occupying the rental unit; and
- he does not believe the Tenant has filed an Application for Dispute Resolution to dispute either the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities or the Four Month Notice to End Tenancy that are the subjects of these proceedings.

The Agent for the Landlord stated that:

- this tenancy began in February of 2019;
- on February 02, 2020 he personally served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of February 12, 2020; and
- on October 01, 2020 he personally served the Tenant with a Four Month Notice to End Tenancy, which required her to vacate the unit by January 30, 2020.

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 \$500.00 by the first day of each month; that the Tenant is still occupying the rental unit; and that the Tenant has not paid rent for any period after October 31, 2019. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$1,000.00 in rent for November and December of 2019.

On the basis of the undisputed evidence, I find that the Tenant was personally served with a Four Month Notice to End Tenancy, which required her to vacate the unit by January 30, 2020. When a Tenant is served with a Four Month Notice to End Tenancy, the Tenant is entitled to compensation that is the equivalent of one month's free rent, pursuant to section 51(1) of the *Act*. I find that the Tenant was not obligated to pay rent for January of 2020, pursuant to section 51(1) of the *Act*, and I am not, therefore, awarding compensation to the Landlord for unpaid rent for January.

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 the Ten Day Notice to End Tenancy, dated February 02, 2020, was personally served to the Tenant on February 02, 2020. I find that the Landlord had the right to serve this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as rent was outstanding on February 02, 2020.

Section 46 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. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended and that she must vacate the rental unit on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. As the Tenant has not yet vacated the rental unit, I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Tenant is obligated to pay rent for the days the Tenant remained in possession of the rental unit. As the Tenant remains in possession of the rental unit and I am granting the Landlord an Order of Possession that entitles the Tenant to remain in the rental unit until April 30, 2020, I find

that the Tenant must also pay rent for February, March and April of 2020, which is \$1,500.00.

On the basis of the undisputed evidence, I find that the Tenant was required to pay for hydro consumption during the tenancy, which she paid directly to the Landlord, and that she has not paid any portion of the two hydro bills submitted in evidence, which total \$194.48. I find that the Tenant still owes this amount to the Landlord

I find that the Landlord's application 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 at 1:00 p.m. on April 30, 2020. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

It is my understanding that due to the current health crisis in British Columbia, the Supreme Court of British Columbia is not enforcing most Orders of Possession. This does not affect the validity of this Order of Possession. In the event the Tenant is able to safely move out of the rental unit during this health crisis by the effective date of this Order of Possession, the Tenant should do so. The effective date of this Order is intended to provide the Tenant with a reasonable opportunity to safely secure alternate accommodations.

In the event the Tenant does not vacate the rental unit by the effective date of the Order of Possession, the Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court whenever that Court deems it appropriate.

The Landlord has established a monetary claim, in the amount of \$2,794.48, which includes \$2,500.00 in unpaid rent, \$194.48 for unpaid hydro charges, and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$2,794.48. In the event that 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: April 07, 2020

Residential Tenancy Branch