



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL OPR MNR MNDC FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution made on May 26, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession;
- a monetary order for unpaid rent or utilities;
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Landlord's agent attended the hearing and was accompanied by S.A., an advocate. The Tenant attended the hearing and was represented by H.T., legal counsel. The Landlord, S.A., and the tenant provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, S.A. testified the Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail. S.A. provided Canada Post tracking information during the call, and H.T. acknowledged receipt. In addition, H.T. advised the Tenant served the documentary evidence upon which she intended to rely on the Landlord by email. S.A. acknowledged receipt. No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were represented or in attendance at the hearing and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*. The Tenant did not submit documentary evidence in response to the Application.

The parties were given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to a monetary order for money owed or compensation for damage or loss?
4. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed the Tenant rents the upper rental unit at the property and that the tenancy began on February 15, 2019. The parties agreed that rent in the amount of \$2,300.00 per month is due on the first day of each month. The parties agreed the Tenant paid a security deposit of \$1,150.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 14, 2020 (the "10 Day Notice"). Rent in the amount of \$2,300.00 was outstanding at that time. The Landlord testified the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on February 14, 2020. A signed Proof of Service document confirming service was witnessed by G.K. was submitted in support. On behalf of the Landlord, S.A. testified that rent has not been paid since the 10 Day Notice was issued and that \$11,500.00 remains outstanding.

In reply, the Tenant denied receipt of the 10 Day Notice. She testified she paid rent in cash to May 31, 2020 but acknowledged she did not pay rent when due on June 1, 2020. In support, the Tenant referred to a screen print of a bank statement showing a withdrawal of \$2,600.00 on January 31, 2020. In addition, the Tenant testified the Landlord required payment in cash and refused to issue receipts.

The Landlord also sought to recover the filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord sought an order of possession. In this case, S.A. testified, and I find, that the 10 Day Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on February 14, 2020. Service in this manner was supported by the Proof of Service document referred to above. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received three days later. Therefore, I find the 10 Day Notice is deemed to have been received by the Tenant on February 17, 2020. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until February 22, 2020 to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. However, there was no evidence the Tenant disputed the 10 Day Notice in accordance with section 46(4) of the *Act*. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice and must vacate the rental unit. Therefore, I find the Landlord is entitled to an order of possession, which will be effective two days after it is served on the Tenant.

With respect to the Landlord's claim for unpaid rent, I find there is insufficient evidence before me that the Tenant did not pay rent as claimed. The Landlord bears the burden of proving the claim on a balance of probabilities. In the absence of evidence in support of the non-payment of rent – such as a tenant ledger or bank statements – I find the Landlord cannot succeed. However, the Tenant acknowledged during the hearing that the payment due on June 1, 2020 has not been made. Therefore, I find the Landlord is entitled to unpaid rent in the amount of \$2,300.00 for the rent payment due on June 1, 2020. Having been successful, the Landlord is also entitled to recover the \$100.00 filing fee paid to make the Application. I also find it is appropriate in the circumstance to order that the Landlord is authorized to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$1,250.00, which has been calculated as follows:

Claim	Allowed
Unpaid rent:	\$2,300.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$1,150.00)
TOTAL:	\$1,250.00

As the tenancy is ending based on the 10 Day Notice it has not been necessary to consider the Landlord's request for an order of possession based on the Two Month Notice to End Tenancy for Landlord's use of Property dated March 27, 2020.

Conclusion

The Landlord is granted an order of possession, which will be effective two days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$1,250.00. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: June 22, 2020

Residential Tenancy Branch