



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, FFL

Introduction

In this dispute, the landlord seeks an order of possession for unpaid rent pursuant to sections 46 and 55 of the *Residential Tenancy Act* (the “Act”). In addition, the landlord seeks recovery of the filing fee in the amount of \$100.00.

The landlord applied for dispute resolution on July 3, 2020 and a dispute resolution hearing was held on July 31, 2020. Representatives for the landlord and the tenant attended the hearing, and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Issues

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

By way of background, the tenancy began on March 1, 2019 and monthly rent, which is due on the first of the month, is \$2,400.00. The tenant paid a security deposit of \$1,200.00, which the landlord currently holds in trust pending the outcome of this decision. A copy of the written tenancy agreement was submitted into evidence.

I note that while there are two tenants named on the tenancy agreement, one of which is a law practice and one of which is the lawyer of that law practice. Only the law practice, or “group,” is named on the landlord’s application.

On March 5, 2020, the landlord’s wife served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) on the tenant for unpaid rent of \$2,400.00 that was due on March 1, 2020. In addition, there was a reference to unpaid utilities in the amount of \$90.00 that was due on January 1, 2020. A copy of the Notice was submitted into evidence. It should be noted that the Notice indicated a 10-day period ending March 5, 2020; this is corrected to March 15, 2020, pursuant to section 53 of the Act.

Also submitted into evidence were documents related to the rent arrears that have accumulated since March 2020; the landlord confirmed, however, that he is not seeking a monetary order in this application. Rather, he simply wants the tenant to leave so that he can find a paying tenant. The landlord commented that the tenant has not paid rent for six months and, in his opinion, the tenant is simply taking advantage of the moratorium on evictions due to the pandemic.

The tenant spoke at length about the government’s ban on evictions, about the possibility of making payment arrangements with the landlord, and that he would be able to come up with at least \$2,400.00 of the unpaid rent within 30 days. He also spoke briefly about financial support or relief that is available to businesses suffering loss of rent. Finally, he spoke briefly about his recent health complications with has landed him in the hospital on a frequent basis over the past two to three months.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due on March 1, 2020. There is no evidence before me that the tenants had a right under the Act to not pay the rent for March 2020, and, there is no evidence before me to indicate that the tenant filed an application to dispute the Notice under the Act. The tenant did not dispute that he did not pay rent.

Section 46(1) of the Act states that a landlord

may end a tenancy if rent is unpaid on any day after it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In this dispute, the landlord gave the Notice on March 5, 2020 for rent that was due on March 1, 2020.

Section 55(2)(b) of the Act states that

A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution: [. . .]

a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired

In addition, section 55(4) of the Act states that

In the circumstances described in subsection (2)(b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, the landlord gave the Notice, the tenant did not dispute the Notice by making an application for dispute resolution, and the time for making that application has now expired. As such, pursuant to section 55(4) of the Act, I grant the landlord an order of possession.

Finally, with respect to the claim for the filing fee, section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the landlord was successful, I grant his claim for reimbursement of the \$100.00 filing fee.

Section 38(4)(b) of the Act permits a landlord to retain an amount from a security or pet damage deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” As the tenancy has now ended, I order that the landlord may retain \$100.00 of the tenants’ security deposit in full satisfaction of the award under section 72(1) of the Act. (The landlord must, of course, handle the remainder of the security deposit in accordance with section 38 of the Act.)

As an aside, while the tenant spoke of making rent arrears repayment arrangements with the landlord, “affected rent” (as it is referred to in the *COVID-19 (Residential Tenancy Act and Manufactured Home Park Tenancy Act) Regulation*, and which went into force on July 30, 2020) for which repayment plans are legislatively mandated, only covers unpaid rent during the state of emergency, which commenced on March 18, 2020. As such, the unpaid rent which resulted in the landlord’s issuing the Notice is not covered by the new regulation.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: July 31, 2020

Residential Tenancy Branch