



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL-S, MNDCL-S, FFL

Introduction

The landlords filed an Application for Dispute Resolution (the “Application”) on July 7, 2020 seeking an order of possession for the rental unit, to recover the money for unpaid rent and compensation for damages, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 6, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlords attended the telephone conference call hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlords made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under Section 89 of the *Act*, and I must accept that evidence.

The landlords gave testimony that they sent the notice of this hearing and their prepared evidence via registered mail to the tenant on July 8, 2020. They provided a Canada Post registered mail tracking number and a printout confirmation. This was to the mail address where the tenant resides, in the rental unit. They also stated they provided an amended application to the tenant via registered mail on July 18, 2020, delivered on July 22, 2020.

Based on the submissions of the landlords, I accept the tenant was served notice of this hearing and the landlord’s application in a manner complying with section 89(1)(c) of the *Act*, and the hearing proceeded in the tenant’s absence.

Preliminary Matters

The tenant did not attend the hearing. On August 4, 2020, two days prior to the hearing, the tenant provided two documents to the Residential Tenancy Branch. The landlords stated they did not receive documents from the tenant prior to the hearing.

The Residential Tenancy Branch Rules of Procedure are in place to ensure a fair, efficient and consistent process for resolving disputes for landlords and tenants. Rule 3.15 provides that: “. . . the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.” Rule 3.17 allows for the Arbitrator’s discretion in allowing documentary evidence that does not meet the timeline. If accepted, there is allowance for an adjournment.

I do not accept the late evidence provided by the tenant, given that it was not provided to the landlords and only provided to the Residential Tenancy Branch only two days prior to the hearing. The tenant did not attend the hearing to address the late evidence or provide testimony on the issue of the late evidence itself. For these reasons, I will not consider this evidence in the hearing. Similarly, I will not consider this evidence when reaching the decision in this matter.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and/or utilities pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to a Monetary Order for Damage or Compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlords spoke to the terms of the tenancy agreement, a copy of which was provided as evidence. The tenancy began on April 1, 2019, with the rent amount at \$1,725.00. The tenant made a payment of \$862.50 for a security deposit on March 11, 2019. The tenancy agreement also contains the terms: “all utilities to be paid by tenants – hydro, CRD & sewage.”

The landlords state that the tenant failed to pay rent and utilities. They submitted copies of emails they sent to the tenant as demands to pay. These emails included copies of the invoices from gas and hydro. The landlords initiated a process to issue a ‘10-Day Notice for unpaid Rent or Utilities’ in January 2020, then cancelling that process on February 4, 2020. They sent further reminders on March 20 and March 29.

The landlords sent an email to the tenant on March 29 stating “as an act of supporting tenants, of love, and care u can pay use \$1550.00 plus utilities for the month of April only. However, this is not applicable for the month of March rent which v [sic] have not received as of today.” They also sent a comprehensive summary of the past discussions they had with the tenant on April 5, 2020. Further queries followed through May and June.

The landlord applied for an Order of Possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) issued on June 25, 2020. The reason for the landlord serving the 10 Day Notice is the unpaid rent due on March 1, 2020 (\$1,725.00) and unpaid utilities following a written demand on January 1, 2020 (\$356.94).

On the 10 Day Notice the landlords checked the indication that the tenant was served on June 25, 2020. The landlords also submitted a ‘Proof of Service’ for the 10 Day Notice which shows that the landlords hand delivered a copy to the tenant at 5:48 pm on June 25, 2020. This form is signed by one of the landlords to “confirm [they] served the *Notice to End Tenancy* in the way described on Page 1”. In the hearing, the landlords stated they served the two-page 10 Day Notice in the manner described on the proof of service document.

The tenant gave a written statement to the landlords via email on July 4, 2020, submitted by the landlords as evidence. This is prior to the landlords applying for dispute resolution. The tenant states: "I'm not sure if your [sic] aware that there's a provincial ban on evictions for people behind on rent. That's still in effect according to the government website." The landlords responded by stating: ". . .we have consulted BC residential Branch and landlords organisation. Both say we can."

The 10 Day Notice states that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, July 5, 2020. There is no record of the tenant subsequently paying the rent or applying for dispute resolution. As of the date of the hearing, the tenant remained in the rental unit.

The landlords applied for a monetary order for \$6,943.64. The amount of this claim was amended twice by the landlords' prior to the hearing. In the hearing, the landlords stated they provided an estimate for outstanding July amounts of utilities. In actuality, this amount is \$222.10, reduced from initial estimate by \$70.05. This reduces the total amount claimed to \$6,873.89.

The landlords provided itemized receipts of utility amounts claimed from each of BC Hydro, municipal water services, and sewer costs. This was accompanied by bank statements showing automatic withdrawals for amounts they set out in detailed ledgers.

The landlords, in a written statement, underlined that they assisted the tenant by reducing rent for April and May. Also, they accepted late payments of rent "on several occasions"

Analysis

From the testimony of the agent I am satisfied that a tenancy agreement was in place. The agent provided the specific term of rental payment and amount. The tenant did not attend the hearing; therefore, there is no evidence before me to show otherwise.

Ministerial Order No. M089, issued under the *Emergency Program Act* on March 30, 2020, previously provided that "a landlord must not give a tenant a notice to end the tenancy during the period this order is in effect."

Ministerial Order No. 195, issued on June 24, 2020 and effective on that date, provides that a landlord must not issue a 10 Day Notice for “affected rent.” This term is defined in section 1 as:

- (a) rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the emergency period, and
- (b) utility charges that become due to be paid by a tenant during the emergency period, if a tenancy agreement requires the tenant to pay utility charges to the landlord;

The more recent Ministerial Order No. 195, while still restricting the issuance of a 10 Day Notice for rent owing during the state of emergency, no longer provides a restriction for the issuance of a 10 Day Notice for unpaid rent or utilities *for any period prior to the start of the state of emergency*.

The “emergency period” began on March 18, 2020, and as of the date of this decision continues into the present. Based on my interpretation of the legislation, and in consideration of the 10 Day Notice issued by the landlords in this matter, I find they issued the 10 Day Notice on June 25, 2020 for the reason of rent owing on March 1, 2020. Additionally, the 10 Day Notice was issued for utilities owing from January 2020. These dates show time periods that are not within the “emergency period”. For this reason, I find the landlords are not prevented from issuing the 10 Day Notice.

The *Act* section 46(4) allows a tenant who receives five days to pay the overdue rent or submit an Application for Dispute Resolution to cancel a 10 Day Notice. Section 46(5) stipulates that if a tenant fails to apply seeking to cancel the 10 Day Notice, they are conclusively presumed to have accepted the tenancy ends on the effective date of the 10 Day Notice and they must vacate the unit.

Based on the oral testimony, and in accordance with section 88 of the *Act*, I find that the landlords served the two-page 10 Day Notice on June 25, 2020.

I accept the evidence before me that the tenant failed to pay the rent and utilities owed in full by June 30, 2020, within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that 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 10 Day Notice, July 5, 2020.

Based on the evidence before me, I find the landlord is entitled to an Order of Possession. As per the landlord's request I will issue the Order of Possession under section 55 of the *Act*.

Section 26 of the *Act* outlines a tenant's duty to pay rent:

- (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.

By the specific term within the tenancy agreement, the tenant agreed to pay all utilities.

I find there was a pattern of non-payment of rent and utilities, starting from January 2020 onwards. The landlord stated that they tried to give the tenants opportunities to continue paying on a regular basis, but the tenants were not able to comply.

The landlord provided detailed testimony, account ledgers and evidence in the form of bank statements and receipts. As presented, I find the amount of \$6,873.59 is accurate through to August 2020. I have reduced the amount claimed by \$146.00, because the landlords presented that this was an estimated amount for August utilities. Without solid evidence on a claimed amount, I am not granting that portion of the claim. This leaves \$6,727.59.

The tenant did not attend the hearing and did not provide documentary evidence; therefore, there is no evidence to the contrary on this exact amount.

Moreover, the hearing itself was scheduled for August 6, 2020, and the landlord stated that they were certain the tenants were still living in the rental unit on that date. The tenants have been overholding since the effective date of the end of tenancy, July 5, 2020. For this reason, I grant the landlord the claimed monthly rental amount of \$1,225.00 for August 2020.

The tenant did not attend the hearing and did not provide documentary evidence; therefore, there is no evidence contrary to that provided by the landlords.

I find the landlords are entitled to an award for the amount claimed: \$6,727.59.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$6,727.59. After setting off the security deposit amount of \$862.50, there is a balance of \$5,865.09. I am authorizing the landlords to keep the security deposit amount and award the balance of \$5,865.09 as compensation for rent and utility amounts owing.

As the landlord is successful, I find that the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,985.09 for rent and utilities owed from January 2020 through to August 2020 and a recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: August 13, 2020

Residential Tenancy Branch