



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 29, 2020. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "*Act*"):

- an order of possession for unpaid rent or utilities;
- a Monetary Order for unpaid rent; and,
- to recover the filing fee from the tenant for the cost of this application.

The landlord attended the hearing and provided testimony. The tenant did not attend the hearing. The landlord testified that he sent the Notice of Hearing package and evidence to the rental unit on September 15, 2020. The Landlord provided registered mail tracking information to show this package was sent. I find the tenant is deemed to have received this package on September 20, 2020, the 5th day after it was mailed, pursuant to Section 90 of the *Act*.

The landlord was provided 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.

The Landlord stated that he is no longer seeking a monetary order for the unpaid rent and would like to withdraw this portion of his application. The Landlord stated that he is only seeking an order of possession. I hereby amend the Landlord's application accordingly.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The landlord testified that current rent is \$750.00, and is due on the first day of each month. The landlord holds a security deposit of \$345.00.

The landlord testified that the tenant has not paid any rent since December of 2019. The landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was posted to the tenant's door on August 5, 2020. The 10 Day Notice specified that \$2,750.00 was due, as of March 1, 2020.

At the hearing, the Landlord clarified that as of March 1, 2020, the Tenant actually owed \$3,000.00, not \$2,750.00. This was based off the Tenant's failure to pay rent for December 2019, January 2020, February 2020, and March 2020, totalling \$3,000.00. The Landlord stated that he was unable to serve a 10 Day Notice for many months due to the restrictions on evictions, due to COVID-19, which is why he waited until August 5, 2020, to serve the Tenant with a 10 Day Notice for unpaid rent dating back to late 2019 and early 2020. The Landlord stated that he has been as generous and accomodating as he can, but it has gone too far.

The Landlord stated that he has not received any rent since December 2019, and it is approaching 1 year since the Tenant has paid rent. The Landlord acknowledged that he is aware that he cannot issue a 10 Day Notice for unpaid "affected rent" (without first giving a repayment plan). Unpaid "affected rent" is rent that became due from March 18, 2020, until August 20, 2020. The Landlords stated that this particular 10 Day Notice was issued because the Tenant also failed to pay rent that was not "Affected rent".

Analysis

Based on the unchallenged testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

I note that a Landlord may not issue a 10 Day Notice for unpaid “affected rent”, without first offering the Tenant a chance to pay off the arrears via a repayment plan. I note affected rent is rent that became due between March 18, 2020, until August 20, 2020. However, in this case, I note the Landlords issued this 10 Day Notice due to unpaid rent that was not “affected rent”. It was based off rent that was owed for many months before the COVID emergency period occurred and started (in March 2020). As such, I find the Landlord was entitled to issue this 10 Day Notice, without first offering a repayment plan in accordance with the COVID and related measures regulations.

Any determinations I make regarding the validity of this 10 Day Notice, and whether or not the Landlord is entitled to an order of possession will be based off of rent that is not “affected rent”. As no repayment plan has been given to the Tenant, any “affected rent” which is also owed on top of regular rent, will not be considered when determining the validity of the 10 Day Notice. In other words, the validity of this 10 Day Notice will be based purely off the rent that had accrued prior to the COVID pandemic and related regulations.

In this case, I find that the tenant had a balance of unpaid rent in the amount of \$3,000.00 at the time the 10 Day Notice was issued. On August 5, 2020, the 10 Day Notice was posted to the door of the rental unit. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the tenant is deemed to have received the 10 Day Notice on August 8, 2020.

The tenant had 5 days to pay all outstanding unaffected rent in full or file an application for dispute resolution. I find no evidence that the tenant did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the landlord was substantially successful in this hearing, I order the tenant to repay the \$100. Pursuant to sections 72 of the *Act*, I authorize the landlord to retain \$100.00 from the security deposit in order to compensate him for the cost of filing this application, which I find leaves a security deposit balance of \$245.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: October 29, 2020

Residential Tenancy Branch