



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR-DR-PP, OPRM-DR, FFL

Introduction:

This matter was initiated as an ex parte Direct Request Proceeding, pursuant to section 38.1 of the *Residential Tenancy Act (Act)*. The Adjudicator considering the matter concluded that the order that the direct request proceeding should be reconvened in accordance with section 74 of the *Act*.

This participatory hearing was convened to consider the Landlord's application for an Order of Possession, a monetary Order for unpaid rent, and to recover the filing fee.

The Agent for the Landlord stated that on October 10, 2020 notice of this hearing was served to each Tenant, by registered mail, at the rental unit. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that the Tenants were served with notice of this hearing, and the hearing therefore proceeded in their absence.

The Agent for the Landlord stated that on September 24, 2020 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch was served to each Tenant, by registered mail, at the rental unit. In the absence of evidence to the contrary, I find that the Tenants were served with these documents and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. She affirmed that she would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Issue(s) to be Decided

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

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on November 01, 2019;
- the Tenants agreed to pay monthly rent of \$2,400.00 by the first day of each month;
- the Tenants did not pay any rent for the period between April 01, 2020 and August 31, 2020;
- the Landlord has not applied for compensation for any of the rent due prior to August 31, 2020;
- the Tenants have not paid the rent that was due on September 01, 2020;
- the Tenants paid \$2,450.00 on October 01, 2020;
- the Tenants have not paid any rent for November and December of 2020;
- the Agent for the Landlord would like to amend the Application for Dispute Resolution for unpaid rent from November and December of 2020;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had a declared effective date of September 13, 2020, was posted on the door of the rental unit on September 03, 2020;
- the Landlord did not provide a service address for the Landlord on the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as the Tenant has sent inappropriate text messages and the Landlord was concerned that the Tenant would do “bad things”; and
- the Tenant has always been able to contact the Landlord by email or text message.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$2,400.00 by the first day of each month and that the Tenants have not paid the rent for September of 2020. As the Tenants are required to pay rent when it is due, pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenants must pay \$2,400.00 in outstanding rent to the Landlord for September.

On the basis of the undisputed evidence, I find that the Tenants have not paid any rent for the period between April 01, 2020 and August 31, 2020, with the exception of the extra \$50.00 in rent that was paid on October 01, 2020, which should be applied to the

earliest debt incurred by the Tenants. As the Landlord has not applied for compensation for any unpaid rent for the period between April 01, 2020 and August 31, 2020, I am unable to award compensation for rent from that period.

I grant the Agent for the Landlord's application to amend the Agent for the Landlord to include unpaid rent from November and December of 2020. I find that it was reasonable for the Tenants to conclude that the Landlord is seeking to recover all of the 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 rent from November and December of 2020.

On the basis of the undisputed evidence, I find that the Tenants have not paid the rent for November or December of 2020. As the Tenants are required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenants must pay \$4,800.00 in outstanding rent to the Landlord for November and December.

Although the Agent for the Landlord's did not apply to amend the Agent for the Landlord to include unpaid rent from any period prior to September 01, 2020, I would have denied that application. I find that it would not have been reasonable for the Tenants to conclude that the Landlord would be seeking to recover unpaid rent that accrued prior to September 01, 2020 at these proceedings, given that they did not claim that amount on the Application for Dispute Resolution.

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. As the Tenant did not pay the rent that was due on September 01, 2020, I find that the Landlord had the right to end this tenancy pursuant to section 46 of the *Act*.

On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, served pursuant to section 46 of the *Act*, was posted at the rental unit on September 03, 2020.

Section 46(2) of the *Act* stipulates that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities must comply with section 52 of the *Act*. I have viewed the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and am satisfied that it complies with section 52 of the *Act*. I therefore grant the Landlord an Order of Possession.

I note that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities did not provide the Tenant with a mailing address for the Landlord, although that would not typically prevent a Tenant from disputing the Notice. As the Tenant had an email

address and a telephone number for the Landlord, I find that the Tenant could have paid the outstanding rent if they were so inclined.

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 December 31, 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.

The Landlord has established a monetary claim, in the amount of \$7,300.00, which includes \$7,200.00 in unpaid rent 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 \$7,300.00. In the event the Tenants do not comply with this Order, it may be served on the Tenants, 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: December 14, 2020

Residential Tenancy Branch