



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on September 16, 2020 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of the October 9, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as they were not satisfied with the completion of the tenancy agreement.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on December 17, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord gave the tenant notice of this dispute resolution hearing by registered mail. This enclosed their evidence. The landlord submitted a copy of a Canada Post receipt and a tracking sheet as proof of delivery to the tenant.

I find the tenant had proper notice of this participatory hearing; however, they did not attend.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent 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 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 landlord submitted a copy of the Residential Tenancy Agreement. This shows the start of tenancy date was May 1, 2020. This was set for a fixed term to end on April 30, 2021. The rent was \$1,250 per month payable on the first of each month. A security deposit amount of \$625 was paid on May 1, 2020.

The agreement as submitted does not bear the signature of the tenant. The landlord spoke to this in the hearing and explained this was due to the tenant needing proof of the tenancy in order to receive funding assistance for monthly rent. The tenant also provided a landlord-signed copy to their employer; however, they did not provide their signature on the document and return that to the landlord. The landlord provided in the hearing that they reviewed the tenancy agreement – face-to-face – with the tenant on April 15, 2020 when they moved in to the unit.

The landlord applied for an order of possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”) issued to the tenant on September 3, 2020. This was for the unpaid rent amount -- \$1,250 -- that was due on September 1, 2020.

In a ‘Proof of Service’ document, the landlord provided the detail that they taped the document to the entry door of the rental unit. The landlord provided on this form that “the tenant . . . confirmed receipt of same”. A witness attested and signed that they observed this, signing this document on September 14, 2020.

The landlord also applied for a monetary order for \$1,250. The landlord's 'Direct Request Worksheet' shows this amount for September 1, 2020. This total is \$8,754.00 up to February 2020.

In the hearing, the landlord amended the claimed amount to include October 2020. The tenant vacated the unit on October 25, 2020. This brings the total claimed amount to \$2,500.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and the conditions of how it was started with the tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment.

Section 46 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says that if a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the undisputed submissions by the landlord, I find they issued the 10-Day Notice to the tenant on September 3, 2020. By section 90 of the *Act*, this document was deemed served on September 6, 2020, three days after it was served in this manner. The tenant failed to pay the rent owing by September 11, 2020, within the five days granted under section 46(4) of the *Act*. There is no evidence before me that the tenant disputed the 10-Day Notice within the 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, September 14, 2020

The evidence of the landlord on the monetary claim is not disputed. An amendment to the Application is allowed by Rule 4.2 of the Residential Tenancy Branch Rules of Procedure.

I find that the tenant is obligated to pay \$2,500, as per the tenancy agreement.

As the landlord was successful in this application, I find they are is entitled to recover the \$100 filing fee they paid for their 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 \$3,600, for rent owed from September to October 2020, and 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: December 17, 2020

Residential Tenancy Branch