



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPRM-DR, OPR-DR-PP, FFL

Introduction

The landlords seek an order of possession and a monetary order pursuant to sections 55 and 56 of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the filing fee under section 72 of the Act.

The landlords filed an application for direct request on October 14, 2020 and on November 2, 2020 an adjudicator reconvened the ex parte proceeding to a dispute resolution hearing before an arbitrator. A hearing was held before me on Thursday, December 17, 2020 at 11:00 AM and one of the landlords and his agent attended the hearing. They were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses. At no point did the tenant attend the hearing.

Regarding service, the landlord testified that he served the Notice of Dispute Resolution Proceeding package on the tenant by way of Canada Post Registered Mail on November 4, 2020 which, according to Canada Post's website, was received by the tenant on November 6, 2020. Tracking numbers were submitted into evidence confirming this.

Based on this undisputed oral and documentary evidence I find that the landlords served the tenant in compliance with the Act and the *Rules of Procedure*.

Issues

1. Are the landlords entitled to an order of possession?
2. Are the landlords entitled to a monetary order?
3. Are the landlords entitled to retain the security deposit?
4. Are the landlords entitled to recovery of the application filing fee?

Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on March 1, 2018 and monthly rent, which is due on the first of the month, is \$1,000.00. The tenant paid a security deposit of \$500.00. A copy of a written Residential Tenancy Agreement was submitted into evidence.

The landlord testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent ("Notice") on the tenant by posting it on the door on October 2, 2020. A copy of the Notice, along with a payment plan, were tendered into evidence. There is no evidence that the tenant disputed the Notice under the Act and the tenant did not pay rent.

Second, the landlord testified that as of today's date (December 17, 2020) rent arrears are in the amount of \$6,195.00. A worksheet showing the various amounts of rent that are unpaid was submitted into evidence.

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.

Claim for Order of Possession

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 tenant that the Notice would be cancelled if they paid rent within five days of service. The Notice also explains that the tenant 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 his submission, that the tenant did not pay rent when it was due, or in compliance with a rent repayment plan. There is no evidence before me that the tenant had a right under the Act to not pay the rent, and no evidence indicating that she applied to cancel the Notice.

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 tenant is deemed (under section 90(c) of the Act) to have received the Notice on the third day after it is attached to the door. Thus, the tenant had 5 days within October 5, 2020 to either pay the rent or dispute the Notice. She did neither. Consequently, pursuant to section 55(2)(b) and 55(4)(a) of the Act I hereby grant the landlords an order of possession of the rental unit. This order is issued to the landlords, in conjunction with this decision.

Claim for Unpaid Rent

The landlord gave oral and documentary evidence that the tenant has not paid and at this point is in arrears totalling \$6,195.00.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlords have met the onus of proving their claim for unpaid rent in the amount of \$6,195.00.

Claim for Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recovery of the filing fee. As the landlords were successful in their application, I therefore grant their claim for reimbursement of the \$100.00 filing fee.

Summary of Award and Retention of Security Deposit

A total of \$6,295.00 is awarded to the landlords.

Section 38(4)(b) of the Act permits a landlord to retain a security deposit if “after the end of the tenancy, the director orders that the landlord may retain the amount.” Thus, I order that the landlords may, after the tenant vacates, retain the tenant’s security deposit of \$500.00 in partial satisfaction of the above-noted award.

A monetary order in the amount of \$5,795.00 is issued in conjunction with this decision to the landlords. (I note that, during the hearing, I miscalculated the balance as being a different amount; the above-noted amount is the correct total.)

Conclusion

I grant the landlords an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I grant the landlords a monetary order in the amount of \$5,795.00, which must be served on the tenant. Should the tenant fail to pay the landlords the amount owed, the landlords may file, and enforce, the order in the Provincial Court of British Columbia (Small Claims Court).

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

Dated: December 17, 2020

Residential Tenancy Branch