



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ANHART COMMUNITY HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPM, MNDCL-S, MNRL, FFL

Introduction

On November 19, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for the rental unit, a Monetary Order for unpaid rent, a Monetary Order for outstanding fines, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord's Agent (the “Landlord”) attended the conference call hearing; however, the Tenant did not attend at any time during the 22-minute hearing. The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package by sending it via registered mail on November 30, 2020. The Landlord provided the Canada Post tracking number and the Canada Post website confirmed that the package was delivered to the Tenant on December 1, 2020. I find that the Tenant has been duly served with the Notice of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

Preliminary Matter

The Landlord did not want to pursue the issues regarding outstanding fines or compensation for the filing fee. As a result, I dismissed these issues with leave to reapply in accordance with section 67 of the Act.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Background and Evidence

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 submitted a copy of the Tenancy Agreement and stated that the one-year, fixed-term tenancy began on May 31, 2019 and continued as a month-to-month tenancy. The rent is \$650.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$325.00.

The Landlord submitted a copy of a Mutual Agreement to End a Tenancy that was signed by the Tenant and the Landlord on October 15, 2020. The Mutual Agreement indicated that the Tenant agreed to vacate the rental unit on October 31, 2020. The Landlord testified that the Tenant has not paid a full month's rent since September 2020 and is still living in the rental unit.

The Landlord submitted documentation and testified about the accumulation of outstanding rent from October 2020 to January 2021, equalling \$1,475.00. The Landlord is requesting that the \$325.00 security deposit be applied against the rental arrears and is not making a claim for the outstanding balance.

The Landlord has requested an Order of Possession based on the mutually agreed end of tenancy for October 31, 2020, and on the fact that the Tenant is overholding and has not been paying her monthly rent. The Landlord requests an Order of Possession for January 31, 2021.

Analysis

Based on the Landlord's testimony and evidence, I find that the Tenant entered into a Mutual Agreement to End a Tenancy with the Landlord and that the Tenant agreed to vacate the rental unit on October 31, 2020.

Section 55 of the Act states that a landlord may request an Order of Possession by making an application for dispute resolution when the landlord and the tenant have agreed in writing that the tenancy is ended.

In this case, I find that the Tenant is currently occupying the rental unit beyond the effective date agreed upon in the Mutual Agreement to End a Tenancy. As such, I grant an Order of Possession to the Landlord for January 31, 2021.

Based on the Landlord's testimony and evidence, I find the Tenant was required to pay rent in the amount of \$650.00 by the first day of each month.

I accept the Landlord's undisputed evidence that the Tenant has not been paying the full amount of rent each month and find that the Landlord has established a monetary claim based on the unpaid rent, in the amount of \$1,475.00. As requested by the Landlord, I authorize the Landlord to keep the security deposit of \$325.00, as partial compensation for the unpaid rent.

Conclusion

Pursuant to section 55 of the Act, I grant the Landlord an Order of Possession to be effective on January 31, 2021 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. 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 section 72, I authorize the Landlord to keep the security deposit in the amount of \$325.00 as partial compensation for the unpaid rent.

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: January 12, 2021

Residential Tenancy Branch