



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capital Region Housing Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-PP, MNR-S, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (Act), filed on November 2, 2020, for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenant;
- a monetary order for unpaid rent;
- authority to keep the tenant's security deposit to use against a monetary award; and
- recovery of the filing fee.

The landlord's agents (landlords) attended the hearing; however, the tenant did not attend.

The landlord submitted evidence showing the tenant was served the landlord's Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail on November 5, 2020. The landlord provided the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.

I accept the landlord's evidence that the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and make submissions to me. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid rent and to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of a monetary award and to recover the cost of the filing fee?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on September 1, 2015, monthly rent payable by the tenant was \$586, due on the 1st day of the month, and a security deposit of \$350 was paid by the tenant at the beginning of the tenancy.

The landlord submitted that the monthly rent paid by the tenant is based on her income and is currently \$881 per month, pursuant to subsequent rent adjustments. The landlord's evidence shows that the tenant is also on a repayment plan, due to a rent deficiency incurred during the rent moratorium period due to the state of emergency. The amount of additional monthly rent owed by the tenant, per the repayment plan, is \$406.

The landlord submitted that on October 15, 2020, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$5,822 as of October 1, 2020. The effective vacancy date listed on the Notice was October 25, 2020.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice. In addition, the tenant has not made any monthly rent payments since the Notice was issued.

The landlord submitted that as of the day of the hearing, the tenant owed total unpaid rent of \$8,465.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here.

I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service.

A 10 Day Notice to end the tenancy is not effective earlier than 10 days after the date the tenant receives the Notice. Under section 90 of the Act, absent evidence to the contrary, a document served by attachment to the door or other conspicuous place is deemed received three days later. Here, the Notice was attached on October 15, 2020, and deemed received on October 18, 2020.

In this case, the landlord listed an effective move-out date of October 25, 2020, on the Notice. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act. Therefore, I find that the Notice effective date is October 28, 2020, 10 days after the tenant was deemed to have received Notice on October 18, 2020.

I find 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 Notice, in this case, October 28, 2020.

As a result, I find that the landlord is entitled to an order of possession of the rental unit pursuant to section 55(2) of the Act, **effective two days after service** of the order upon the tenant.

I grant the landlord a final, legally binding order of possession of the rental unit. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is **cautioned** that costs of such enforcement, such as bailiff fees, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their application to account for further unpaid rent as the tenant has yet to vacate the rental unit. I therefore amended the landlord's application to a total monetary claim of \$8,465, for unpaid monthly rent.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of unpaid rent of **\$8,465**, due under the tenancy agreement. I find the landlord has established a monetary claim in that amount.

I grant the landlord recovery of their filing fee of **\$100**.

At the landlord's request, the tenant's security deposit of **\$350** will be off-set against the total monetary award of **\$8,565**.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of **\$8,215**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is cautioned that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession and for monetary compensation is granted.

The landlord has been authorized to retain the tenant's security deposit in partial satisfaction of their monetary award and they have been awarded a monetary order for the balance due, in the amount of **\$8,215**.

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 22, 2021

Residential Tenancy Branch