



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUCCESS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated November 24, 2020, which should be read in conjunction with this decision.

At the participatory hearing, the landlord's agents (landlords) attended the teleconference hearing. The tenant did not attend the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (Notice of Hearing), application and documentary evidence was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on November 25, 2020. The landlord supplied the registered mail receipt and proof of service.

The landlord submitted that they originally served the Notice of a Dispute Resolution Hearing and all Direct Request documents to the tenant by registered mail on October 21, 2020. The landlord submitted the copy of the Canada Post receipt showing the tracking number.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlords were given the opportunity to provide their evidence orally. 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 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 October 1, 2009, monthly rent payable by the tenant shown on the written tenancy agreement was \$1,100, and a security deposit of \$550 was paid by the tenant at the beginning of the tenancy.

The landlord submitted that the monthly rent obligation of the tenant is \$635, as the tenant's rent is subsidized.

The landlord submitted that on October 2, 2020, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$634.81 as of owed as of October 2, 2020. The effective vacancy date listed on the Notice was October 12, 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 they were not sure if the tenant has vacated the rental unit, but the rental unit is above their office and they have not heard her moving about since October 2020 and the hydro account has been terminated. Further, the landlord

submitted that the tenant did not pay the amount listed on the Notice or any other monthly rent.

The landlord at the hearing requested to amend their application to include a monetary claim for the monthly rent for November and December 2020 and January and February 2021.

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, 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 2, 2020, and deemed received on October 5, 2020.

In this case, the landlord listed an effective move-out date of October 12, 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 corrected to October 15, 2020, 10 days after the tenant was deemed to have received Notice on October 5, 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 15, 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 accept the landlord's testimony that the tenant may have vacated the rental unit without providing notice to the landlord. The landlord were not sure of the exact date the tenant vacated, but she potentially stayed in the rental unit in November 2020.

I find it reasonable that the landlord be allowed to amend their application to account for further unpaid rent through November 2020. I therefore amended the landlord's application to a total monetary claim for unpaid monthly rent of **\$1,269.81**, comprised of the unpaid monthly rent of \$634.81 listed on the Notice for October 2020 and \$635, the monthly rent obligation of the tenant for November 2020.

I find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owes the amount of unpaid rent of **\$1,269.81**.

As the landlord's application had merit, I grant them recovery of the filing fee of **\$100**.

As a result of the above, I find the landlord has established a monetary claim of **\$1,369.81** and grant them a monetary order in that amount.

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.

Although the landlord inquired about adding unpaid monthly rent for the months of December 2020 and January and February 2021 to their monetary claim, I decline to consider those amounts for this application. I do not find the landlord presented sufficient evidence that they took any measures to investigate whether the tenant had vacated, in order to make efforts to re-rent the rental unit.

The landlord is at liberty to make another application for further unpaid monthly rent, however.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent has been granted.

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: February 8, 2021

Residential Tenancy Branch