



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on September 29, 2020, wherein the Landlords requested an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities, as well as recovery of the filing fee.

The Landlords originally applied for relief by way of the Direct Request Proceeding. The Application was adjourned to a participatory hearing as the residential tenancy agreement did not include the Tenant's signature.

The participatory hearing was scheduled before me at 11:00 a.m. on March 1, 2021. Only the Landlord, J.S., and the Landlord's Property Manager, M.G. called into the hearing. M.G. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:20 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that J.S. and M.G. and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. M.G. testified that she personally served the Tenant with the Notice of Hearing and the Application on December 11, 2020. A copy of the Proof of Service was provided in evidence and which confirmed this service was witnessed by a third party. I accept

M.G.'s testimony in this respect and find the Tenant was duly served with notice of the hearing and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by M.G. and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to monetary compensation from the Tenant?
3. Should the Landlords recover the filing fee?

Background and Evidence

In support of the Landlords' claims, M.G. testified as follows. She stated that this tenancy began August 9, 2019. Monthly rent was \$1,600.00 and the Tenant paid a \$800.00 security deposit and a \$800.00 pet damage deposit.

The Tenant failed to pay the March 2020 rent following which the Landlords issued a 10 Day Notice to End Tenancy pursuant to section 46 of the *Act*. The B.C. Provincial moratorium on evictions was declared shortly thereafter such that the Landlords did not pursue an Application before the Residential Tenancy Branch.

M.G. testified that by August 2020 the Tenant owed \$7,000.00 in outstanding rent. On August 21, 2020 the Landlords issued a Repayment Plan, a copy of which was provided in evidence before me.

M.G. stated that the Tenant failed to pay the September rent and failed to pay towards the Repayment Plan. At that time the Landlords issued another 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities, which was posted to the rental unit door on September 8, 2020 (the "Notice").

Although the Tenant also signed a mutual agreement to end their tenancy on August 13, 2020 (a copy of which was provided in evidence) the Tenant failed to move out of the rental unit on the agreed date of September 30, 2020.

M.G. testified that the Tenant failed to pay any rent, save and except for a \$250.00 payment in the fall of 2020, and remains in the rental unit. M.G. further testified that at the time of the hearing, the outstanding amount of rent is \$17,950.00.

Analysis

Based on the Landlords' undisputed testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Landlords issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

Landlord's notice: non-payment of rent

46 (1)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.

(2)A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

(3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4)Within 5 days after receiving a notice under this section, the tenant may

(a)pay the overdue rent, in which case the notice has no effect, or

(b)dispute the notice by making an application for dispute resolution.

(5)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

(a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

As discussed during the hearing a tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenant had no such legal authority to withhold rent. I therefore find that the Tenant failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the M.G.'s testimony that she served the Notice on the Tenant on September 8, 2020 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later, namely, September 11, 2020.

I find that the Tenant did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to section 55 of the *Act*, I find that the Landlords are entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlords have established a total monetary claim of \$18,050.00 comprised of \$17,950.00 in outstanding rent and the \$100.00 fee paid by the Landlords for this Application.

Pursuant to sections 38 and 72 of the *Act*, I authorize the Landlords retain the Tenant's security deposit of \$800.00 and the pet damage deposit of \$800.00 in partial satisfaction of the claim and I grant the Landlords a Monetary Order pursuant to section 67 for the balance due of **\$16,450.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlords are granted an Order of Possession and are entitled to monetary compensation for the unpaid rent and recovery of the filing fee. I authorize the Landlords to retain the Tenant's security and pet damage deposit and interest in partial satisfaction of the claim, and I grant the Landlords a Monetary Order for the balance due in the amount of **\$16,450.00**.

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: March 01, 2021

Residential Tenancy Branch