



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on March 2, 2021. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

1. an order of possession based off of a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice);
2. a monetary order for unpaid rent or utilities;
3. authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
4. a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and,
5. to recover the filing fee from the tenant for the cost of this application.

The landlord attended the hearing and provided testimony. The tenant did not attend the hearing. The landlord testified that he sent the Notice of Hearing and evidence to the Tenant by registered mail on December 12, 2020. Proof of mailing was provided at the hearing. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed to have received that package 5 days after it was mailed.

The landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary Matters

At the hearing, the Landlord stated he did not wish to claim against the deposits held, as he wants to hold the deposits in case there is damage to the unit. The Landlord also stated he did not wish to pursue unpaid utilities, and was only seeking an order of possession based off the Notice, and for unpaid rent. I hereby amend the Landlord's application accordingly.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background and Evidence

The Landlord testified that monthly rent is \$1,250.00, and is due on the first of the month. The Tenant rents the upper floor of a house, and the lower unit is separate, with different tenants and a different tenancy agreement. The Landlord is seeking this application based on the upper unit. The Landlord stated that the Tenant has several roommates, who also live in the upper rental unit, and no rent has been paid for several months. The Landlord has been unable to confirm who is actually still living in the rental unit, but he notes that they are all roommates and occupants which the Tenant brought in to live with him. The Landlord stated he knows the Tenant lived there until at least the end of December but at this point he does not know for sure who is actually living in the unit, only that there are at least a few roommates living there.

The Landlord testified that he served the Notice by personally giving it to the Tenant on November 2, 2020. A copy of the Notice was provided into evidence, and it lists that \$650.00 was overdue at the time that Notice was issued. The Landlord explained that the Tenant only paid \$600.00 on November 1, 2020, and hasn't paid any rent since that time. The Landlord stated that the Tenant and/or the Tenant's roommates continue to reside in the unit and none of them are paying any rent. The Landlord stated that the Tenancy Agreement was with the Tenant only, and the others living there are only roommates and occupants. Regardless, none of the people living in the rental unit are paying rent.

The Landlord stated that the Tenant now owes \$5,650.00, which is comprised of \$650.00 from November, plus December, January, February, and March rent.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenant owed \$650.00 in past due rent at the time the Notice was issued on November 2, 2020. The landlord issued the Notice by giving it to the Tenant in person that same day. I find the Tenant is served with the Notice on November 2, 2020.

The Tenant had 5 days to pay rent in full or file an application for dispute resolution. There is no evidence that the Tenant did either. As such, I find the Tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, I find there is sufficient evidence before me to demonstrate that the Tenant owes and has failed to pay \$5,650.00 in past due rent.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful in this hearing, I also order the tenant to repay the \$100.00 fee the Landlord paid to make the application for dispute resolution. In summary, I find the Landlord is entitled to a monetary order in the amount of \$5,750.00.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant. If the Tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,750.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 02, 2021

Residential Tenancy Branch