



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kitsilano Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on January 20, 2021 for an Order of Possession, and recovery of rent amounts owing. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 16, 2021.

The landlord attended the conference call hearing. The tenant did not attend the hearing; however, a party who maintains occupancy (the “occupant”) in the rental unit attended the hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The landlord stated they provided the notice of this hearing and their prepared evidence to the other party, by putting the documents under the door of the rental unit. The occupant here confirmed they received these documents. Neither the named tenant nor the occupant who attended the hearing provided documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to an order of possession in line with the notice to end tenancy issued to the tenant?

Is the landlord entitled to compensation for the unpaid rent?

Is the landlord entitled to reimbursement of the Application filing fee?

Background and Evidence

a) Order of Possession

The landlord provided a copy of the tenancy agreement, signed by the tenant on April 15, 2018. The agreement shows the tenancy started on May 15, 2018, for the amount of \$850 per month. This rent amount increased to \$871 in January 2020.

The landlord presented that they did not know the named tenant moved out from the unit sometime prior. They maintained that the occupant who attended the hearing is not the tenant and they did not understand who this occupant represents.

The occupant was the roommate of the named tenant for six months, having moved in to the unit in August 2019, and still maintaining occupancy to the present. The named tenant moved out from the unit in January 2020. After this, the occupant told the property manager they would like to “be put on the lease”; however, this did not happen. Prior to their move out, the tenant was paying in cheque to the landlord, and the occupant here would pay the tenant back that amount in cash. This continued until March 2020 when the tenant’s cheque failed – from that month forward, the occupant paid cash directly to the landlord.

In response to the occupant’s request to have a tenancy agreement, the landlord stated they “don’t recall any request in writing” and they received neither a formal application for tenancy, nor a notice from the tenant that they were assigning the tenancy. The property manager in the hearing stated they called to the named tenant in March 2020, and the tenant requested that all matters in the unit were “to be dealt with by [them]”. After this throughout 2020, the landlord tried to call the tenant, with no answer from the tenant. Payments of rent continued in partial amounts in cash.

The landlord provided a copy of the 10-Day Notice to End Tenancy for Unpaid Rent they issued to the tenant on January 7, 2021. This gave the move-out date of January 17, 2021. The reason for this 10-Day Notice is that the tenant failed to pay the amount of \$5,281.75 that was due on January 1, 2021. On page 1 of the document, there are instructions to the tenant that they must pay the rent or apply for dispute resolution within 5 days of receiving the 10-Day Notice.

The landlord provided a document entitled ‘Proof of Service’. This shows they left a copy in the mail box/mail slot at the rental unit on January 7, 2021, signed by the property manager.

b) recovery of unpaid rent

The landlord here presented that payments of the monthly rent amount occurred in partial amounts throughout 2020. The occupant in the hearing stated they inquired and attempted to apply for rent assistance payments; however, the application for rent supplements must be formally initiated by the landlord. The occupant here stated they inquired to the landlord whether they were receiving payments, and the landlord answered to them that they were receiving such payments.

In response to this, the landlord stated they did not receive “rent relief” amounts. They issued receipts to the occupant throughout 2020, indicating the full amount of rent – at \$871.25 – even though they did not receive the full rent amount. The occupant paid \$571.25 from March until August 2020.

A ‘Direct Request Worksheet’ submitted by the landlord shows their claim amount for:

- Jan – Dec 2020 = \$4,410.50
- Jan 2021 = \$871.25

They stated the amount \$4,410.50 is the outstanding amount, “this is the amount that’s not there.” They provided they received no rent from the tenant in 2021.

The tenant referred to rent receipts from 2020. In total they received 9 rent receipts in 2020, and these show the full amount of rent at \$871.25 as being paid. They submitted that they had not paid rent for 2021 because the landlord would not accept these amounts. They also proposed paying back money owed to the landlord through a payment plan; however, the landlord responded to that proposal to say the money owing should be a lump sum, and not a payment plan.

Analysis

a) Order of Possession

The Residential Tenancy Policy Guideline 13, entitled ‘Rights and Responsibilities of Co-tenants’ gives a statement of the policy intent of the legislation. It provides that a “tenant” is a person who has entered a tenancy agreement to pay money as rent for the right to possess a rental unit. If there is no tenancy agreement, the person who made an oral agreement with the landlord to rent the rental unit and pay the rent is the tenant.

The Guideline also sets forth considerations for an “occupant”. In the situation where a tenant allows a person who is not a tenant move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement. By contrast, “co-tenants” are two or more tenants who rent the same rental unit under the same tenancy agreement – they have equal rights and responsibilities.

Here, there was no agreement between the occupant and the landlord. I find the occupant here is not a party to this tenancy and is not a “tenant”. On this I accept the evidence of the landlord that there was never a formal tenancy application initiated by the tenant and no formal assignment of the tenancy to this occupant.

The *Act* s. 46(4) allows a *tenant* who receives a notice to end tenancy under s. 46 five days to pay the overdue rent or apply to cancel the Notice. By s. 46(5) if a *tenant* fails to apply to cancel the 10-Day Notice, they are conclusively presumed to have accepted the tenancy ends on the effective date of the 10-Day Notice and they must vacate the rental unit.

With the landlord placing the 10-Day Notice into the mail slot of the rental unit, I find it was deemed received by s. 90(d) on the third day January 10, 2021 after its service. I accept the undisputed evidence that the tenant failed to pay the rent owed in full by January 15, 2021, within five days granted under s. 46(4). The tenant did not dispute the 10-Day Notice within that five-day period.

Based on this, I find that the tenant is conclusively presumed under s. 46(5) to have accepted that the tenancy ended on the effective day of the 10-Day Notice, January 17, 2021. The occupant’s attempts to pay money for rent does not nullify the landlord’s rights here in regard to their agreement with the named tenant. Similarly, there is no evidence that this occupant had the authority to act on the named tenant’s behalf in this matter.

On my review of the document, the 10-Day Notice contains the necessary elements for it to be effective; therefore, it complies with s. 52.

Based on the evidence and testimony before me, I grant the landlord an Order of Possession for the Rental Unit.

b) recovery of unpaid rent

I find the landlord did not provide sufficient detail of their claim for compensation. I cannot determine the accuracy of outstanding amounts owing without details over the ensuing months

where the occupant here was providing payments to the landlord in a disorganized fashion. I am dismissing this piece of the landlord's Application. There is no evidence to quantify their claim in terms of both rent amounts received and rent amounts outstanding.

I grant the landlord leave to re-apply for monetary compensation. Here, they have not provided sufficient detail in order to prove their eligibility for compensation. They did not provide a full breakdown of particulars, with evidence to verify the amounts.

Because the landlord was moderately successful in their Application, I order reimbursement of one-half the Application filing fee.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. 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.

The landlord's claim for compensation of rent amounts owing is dismissed with leave to reapply.

I Pursuant to s. 72 of the *Act*, I grant the landlord \$50 for the recovery of the filing fee paid for this application. The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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 s. 9.1(1) of the *Act*.

Dated: April 19, 2021

Residential Tenancy Branch