



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on December 3, 2020 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of a January 4, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s Application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s Application to a participatory hearing as they were not satisfied with the completion of the 10 Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”).

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 25, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord gave this tenant notice of this dispute resolution hearing by attaching this to the door of the rental unit on January 6, 2021. This included their prepared evidence for this hearing. This means of service is permitted by s. 89(2)(d) of the *Act* because it concerns the landlord’s Application for an order of possession.

I find the tenant had proper notice of this participatory hearing. They did not attend or provide documentary evidence in advance.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of the agreement they had with the tenant, jointly signed on May 24, 2018. This shows the start of tenancy date was July 1, 2018, with a fixed term ending on June 30, 2019. The rent initially was \$2,550 per month and the landlord testified in the hearing that the rent increased to \$2,615, then \$2,685.

The landlord stated that the tenant rented the downstairs part of the rental unit without the landlord's consent. Here the whole house is the rental unit, of which the tenant rented the downstairs to others. In the tenancy agreement, clause 7 states: "The tenant may not assign or sublet the rental unit, unless with owners' consent."

The landlord here applies for an order of possession pursuant to the 10-Day Notice they issued to the tenant on November 11, 2020. This was for the unpaid amount of rent that was due on November 1, 2020 – the amount was \$2,685. The landlord provided evidence that they served this 10-Day Notice on November 11, 2020, by attaching a copy to the rental unit door. On a separate document they provided for this hearing entitled "Proof of Service" a witness signed to show that they observed this transaction directly. Here they also indicated that "when attaching a copy on the door, tenant coming and taking it without signature."

In the hearing, the landlord specified this was a 3-page document that they served to the tenant. They checked their own copy of the document in the hearing to verify this.

The landlord also applied for a monetary order for \$3,070. Their "Direct Request Worksheet" shows there were two amounts owing:

- \$1,485 for November 2020, after partial payments by the tenant on November 19 and November 23, totalling \$1,200
- \$1,585 – the landlord testified in the hearing that they received \$1,100 from the second tenant for December.

The tenant so named here as the Respondent moved out from the rental unit on January 30, 2021. In the hearing, the landlord testified that they had a discussion with the tenant about the other occupant who remained in the rental unit. The Respondent tenant here told the landlord their message to the other occupant was to vacate as well, but that occupant did not. The landlord testified that, as of the date of this hearing, the other occupant still remained in the rental unit.

The landlord received no rent for the month of January 2021. They wished to amend their Application to include the full amount for January rent; this adds another \$2,685 to the claimed amount. Because the other occupant had not vacated the rental unit, the landlord wished to amend their claim to include full rent for each following month of February and March 2021; they received no rent for either of these subsequent months.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its terms and the conditions of how it was started with the tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the agreement shows the set date for rent payment.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

The landlord here issued a 10-Day Notice for missing rent in November 2020. The *Act* s. 46 states 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.

The following s. 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Following this, s. 46(5) says that 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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the undisputed submissions by the landlord, I find they gave the 10 Day Notice to the tenant on November 11, 2020. The tenant failed to pay the rent owing within the five days granted under s. 46(4) of the *Act*. There is no evidence before me that they disputed the 10 Day Notice within the five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, November 21, 2020.

The *Act* s.52 provides that a notice to end tenancy must be in writing and must contain the essential elements. These are: a date and signature; the rental unit address; and the effective date. Additionally, the notice must be in the approved form when given by a landlord. On my review, the 10-Day Notice issued by the landlord here contains these necessary elements; therefore, it complies with s. 52.

In line with this, I grant an Order of Possession to the landlord, effective two days after its service upon the tenant.

I grant the landlord an award for \$3,070. These are rent amounts outstanding for November and December 2020. There is no evidence provided by the tenant here; therefore, there is no evidence to the contrary that these amounts remain outstanding.

The landlord provided that there is an occupant who remains in the unit as of the date of the hearing. This adds a considerable sum to the claimed amount. In the hearing the landlord wished to amend their Application to add the following months of January, February and March as missing the full rent amount for each month. The landlord's submission here is that the tenant instructed this occupant to move out; however, this occupant did not. This is a situation where the tenant bears responsibility under the tenancy agreement – they are responsible for the overholding occupant who remains in the unit. I so award these extra monthly rental

payments for each month this occupant has remained in the unit. For each of the following monthly rent amounts, this adds \$8,055 to the amount owed by the tenant.

In sum, I find the landlord is entitled to an Order of Possession as well as the unpaid rent amount of \$11,125. As the landlord is successful in this hearing, I find they are entitled to recover the \$100 filing fee paid for their Application.

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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$11,225, for rent owed from November and December 2020, as well as January through March 2021. 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