



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPRM, OPL, FFL

Introduction

On February 8, 2021, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

On March 19, 2021, the Landlord submitted a second Application for Dispute Resolution under the Act. The Landlord requested an Order of Possession for the rental unit for Landlord’s Use of Property and a request to be compensated for the cost of the filing fee. The Landlord’s second Application was crossed with the Landlord’s first Application and the matters were set for a participatory hearing via conference call.

The Landlord’s Legal Counsel (referred to as the Landlord) attended the conference call hearing; however, the Tenant did not attend at any time during the 36-minute hearing.

The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding for the first Application by hand delivering a copy to the Tenant at the rental unit on March 8, 2021. For the second Application, the Landlord provided the Notice of Dispute Resolution Proceeding package to the Tenant by sending it via registered mail on March 20, 2021. The Landlord submitted that the package was delivered to the Tenant on March 22, 2021 (see Style of Cause for tracking number). The Landlord provided Proof of Service documents for both of the Notice of Dispute Resolution Proceeding packages. I find that the Tenant has been duly served with the Notices of Dispute Resolution Proceeding in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the testimony and evidence as presented by the Landlord.

Issues to be Decided

Should the Landlord receive an Order of Possession, in accordance with section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with section 72 of the Act?

Background and Evidence

The Landlord testified that there was no written tenancy agreement. The Landlord submitted a deposit receipt and stated that it acknowledged that the Landlord received a security deposit from the Tenant on June 11, 2018, in the amount of \$300.00. The Landlord stated the tenancy began on July 1, 2018 and that the monthly rent of \$600.00 was due on the first of each month.

The Landlord submitted two 10 Day Notices. The first 10 Day Notice, dated January 27, 2021 (the "10 Day Notice"), was served to the Tenant by placing it on their front door and, by sending it via registered mail. The 10 Day Notice indicated that the Tenant failed to pay the rent of \$600.00 on December 1, 2020. The 10 Day Notice included a move-out date of February 11, 2021.

The Landlord submitted a second 10 Day Notice to End Tenancy, also dated January 27, 2021, which indicated the Tenant failed to pay the rent of \$600.00 on January 1, 2021.

The Landlord indicated that the Tenant failed to pay rent for both December 2020 and January 2021 and is currently in arrears for \$1,200.00.

The Landlord stated the Tenant has paid to occupy the rental unit for February – May 2021; however, has not ever paid the outstanding rent.

The Landlord has requested a Monetary Order for \$1,200.00 and an Order of Possession for the rental unit.

The Landlord did not provide details regarding the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

Based on undisputed evidence, I find that the Tenant entered into an oral tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$600.00 by the first day of each month and that the Tenant has not paid rent from December 2020 through to January 2021. As the Tenant is required to pay rent pursuant to Section 26(1) of the Act, I find that the Landlord has established a monetary claim in the amount of \$1,200.00 in outstanding rent. (the amount claimed by the Landlord).

Section 46 of the Act authorizes a landlord to 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 tenant, within 5 days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution. If the tenant does not pay the rent or make an Application for Dispute Resolution, 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 by that date.

Section 90 of the Act specifies that a document that is posted on a door is deemed to be received on the third day after it is posted. I, therefore, find that the Tenant received the 10 Day Notice on January 30, 2021.

As the Tenant is deemed to have received this Notice on January 30, 2021, the earliest effective date of the Notice is February 9, 2021. However, I find that February 11, 2021 is the effective vacancy date, as indicated on the Notice by the Landlord.

I have no evidence before me that the Tenant paid their rent or applied for Dispute Resolution, therefore, I find that the Tenant accepted that the tenancy has ended. For the above reasons and because the Tenant is still occupying the rental unit, I grant the Landlord an Order of Possession.

The Landlord was successful with their Application and as such, is entitled to be reimbursed for the filing fee of \$100.00.

The Landlord has established a monetary claim, in the amount of \$1,300.00, which includes \$1,200.00 in unpaid rent and the \$100.00 in compensation for the filing fee for this Application for Dispute Resolution. Pursuant to section 72(2) of the Act, I authorize the Landlord to keep the Tenant's security deposit of \$300.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$1,000.00.

| Item | Amount |
|-----------------------------|-------------------|
| Unpaid rent | \$1,200.00 |
| Filing Fee | +100.00 |
| Total monetary claim | \$1,300.00 |
| Minus Security Deposit | -300.00 |
| Total Monetary Order | \$1,000.00 |

As the Landlord did not present evidence regarding the requested Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property, I dismiss the Landlord's (second) Application without leave to reapply.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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 Section 67 of the Act, I grant the Landlord a Monetary Order for \$1,000.00. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 31, 2021

Residential Tenancy Branch