



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

The landlord filed an Application for Dispute Resolution on February 28, 2021 seeking an order of possession of the rental unit. Additionally, they applied for recovery of unpaid rent, and the cost 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 June 7 and June 9, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenants here received the landlord’s notice of this hearing via registered mail. The hearing was adjourned on June 7 so that the landlord could ensure disclosure of their prepared evidence to the tenants. At the reconvened hearing on June 9, the landlord confirmed the materials they provided to the Residential Tenancy Branch initially concerned a different rental unit, albeit with the same parties. On this assertion, and my confirmation with reference to the landlord’s materials, I proceeded with the reconvened hearing on June 9.

The landlord confirmed their receipt of the tenants’ prepared evidence. On this basis, the hearing proceeded on June 9.

Preliminary Matter

On their Application, the landlord named two individuals as the Respondents here. One is the tenant who is shown on the tenancy agreement and is specified as the tenant on

the notice to end tenancy at issue in this hearing. The other third party is known to both the landlord and the tenant; however, there is nothing to establish that a landlord-tenant relationship exists between this third party and the landlord. The named tenant and the third party attended the hearing spoke to this specific point.

Given there is no tenancy agreement between this third party and the landlord, and the fact that the notice to end tenancy does not name this third party, I amend the landlord's Application to exclude this third party.

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 recovery of unpaid rent amounts, 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 provided a copy of the tenancy agreement in their evidence. This is a handwritten document dated April 2019. This bears the signature of the landlord and the tenant here dated March 26, 2019. The agreement provides for the monthly rent amount of \$1,150 and a security deposit amount of \$575.

The landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). They served this to the tenant on February 2, 2021, both by registered mail and by leaving a copy in the mailbox. The tenant confirmed they received this on that same date.

The landlord provided a copy of the 10-Day Notice. It provides that the tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, February 12, 2021.

The reason for the landlord serving the 10-Day Notice, as provided on page 2 of the document, is the unpaid rent due on February 1, 2021. This amount is \$1,150.

In the hearing, the tenant presented that they occupied the unit adjacent to this rental unit in this duplex house. They had an arrangement to renovate that rental unit, in league with the landlord. They stated their wish to rent this neighbouring unit as well and had tentative arrangements in place to do so. They maintained they had paid rent for both the adjacent unit and the rental unit that is the subject of the tenancy agreement.

Because of overpayments, they felt they already paid the rent for the rental unit at issue in this hearing. After they received the 10-Day Notice, they tried calling to the landlord to resolve the issue; however, the landlord did not answer or respond to the tenant's calls.

In response to this, the landlord stated the tenant never had a tenancy agreement in place for the adjacent unit, and there never was an agreement to swap payments. Additionally, the landlord submitted that the tenant had not paid rent for the ensuing months; that is March, April, May and June.

Analysis

From the testimony of the landlord I am satisfied that a tenancy agreement was in place. The agreement shows the specific term of rental payment and amount. The tenant in the hearing verified this information.

The *Act* s. 46(4) states that within 5 days of receiving a Notice a tenant may pay the overdue rent, thereby cancelling the Notice, or dispute it by filing 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

ended on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

At the hearing, the tenants confirmed they did not apply for dispute resolution to challenge the validity of the 10-Day Notice. When questioned directly, the tenant confirmed they did not pay the rent within the five-day time period. They wished to speak to the landlord prior to making a payment and did not proceed with payment because they did not speak with the landlord. I find this stands as confirmation they did not make the payment specified on the 10-Day Notice.

The landlord issued and served the 10-Day Notice to the tenant on February 2, 2021. I accept the undisputed evidence before me that the tenant failed to pay the rent owed in full by February 7, 2021, within the five days granted under s. 46(4) of the *Act*. Additionally, the tenant did not dispute the 10-Day Notice within that 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, February 12, 2021.

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. By s. 5591), I grant an Order of Possession to the landlord.

By s. 55(1.1), I grant the landlord an order for payment of the unpaid rent as provided for on the 10-Day Notice. This is \$1,150. The landlord has not provided ample evidence to show unpaid rent payments for the rental unit beyond this. They made a brief statement at the conclusion of the hearing stating the tenant had not paid the following months' rent up until the date of the hearing; however, the landlord has not provided ledger information or other evidence to show there is non-payment by the tenant. The landlord is free to seek compensation for these other monetary amounts in a separate hearing process.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. I grant an award of \$1,150 to the landlord. After setting off the security deposit, there is a balance of \$575.00. I am authorizing the landlord to keep the security deposit amount and award the balance of \$575.00 as compensation for the February 2020 rent amount.

As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this 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 s. 67 and s 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$675.00 for recovery of rent, and the filing fee for this hearing 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: June 10, 2021

Residential Tenancy Branch