



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPRM, FFL

Introduction

On April 6, 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.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 22-minute hearing. The Landlord testified that they served the Tenant with the Notice of Dispute Resolution Proceeding package by sending it via registered mail on May 10, 2021. The Landlord provided the tracking number and advised that the Canada Post website indicated that a notice card was left at the rental unit; however, that the Tenant did not collect the package. Based on the Landlord’s affirmed testimony and submitted evidence, I find that the Tenant has been duly served with the Notice 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 affirmed 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 provided the following undisputed testimony and evidence:

The one-year, fixed-term tenancy began on September 1, 2020. The rent is \$850.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$425.00. The Landlord submitted a copy of the Tenancy Agreement.

The Landlord stated that the Tenant began paying rent via e-transfer and as of December 2020, stopped paying rent. The Landlord stated that she had a personal interaction and a text with the Tenant about needing to pay the rent; however, the Tenant still did not pay any rent. The Landlord submitted a monetary order worksheet to document the months of unpaid rent and further testified that the Tenant has failed to pay rent for the last 7 months. The Landlord is claiming a loss of \$5,950 in rental arrears.

The Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent, dated March 2, 2021 (the "10 Day Notice") to the Tenant's door on March 2, 2021. The Landlord noted that the Tenant was likely home as the 10 Day Notice had been removed from the front door later that same day.

The 10 Day Notice had an effective date of March 20, 2021 and advised the Tenant that there was, as of March 1, 2021, outstanding rent in the amount of \$3,400.00. The Landlord did not receive any rent from the Tenant.

The Tenant still occupies the rental unit and the Landlord is requesting an Order of Possession for the unit.

Analysis

Based on undisputed evidence, I find that the Tenant entered into a Tenancy Agreement with the Landlord that required the Tenant to pay monthly rent of \$850.00 by the first day of each month and that the Tenant has not paid rent from December 2020 through to June 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 \$5,950.00 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 March 5, 2021.

As the Tenant is deemed to have received the 10 Day Notice on March 5, 2021, the earliest effective date of the notice is March 15, 2021. However, I find that March 20, 2021, is the effective vacancy date, as indicated on the 10 Day 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 \$6,050.00, which includes \$5,950.00 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 \$425.00, in partial satisfaction of the monetary claim.

Based on these determinations, I grant the Landlord a Monetary Order for the balance of \$5,625.00.

Conclusion

Pursuant to Section 67 of the Act, I grant the Landlord a Monetary Order for \$5,625.00. 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.

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.

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: June 08, 2021

Residential Tenancy Branch