



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL / CNR, OLC, LRE

Introduction

On March 30, 2021, the Personal Representative of the Estate of Jeanette Hampton, Deceased (the “Administrator”) submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for Unpaid Rent, to order the Landlord to comply with the Act, and to restrict entry to the rental unit.

On May 18, 2021, the Landlords submitted an Application for Dispute Resolution under the Act. The Landlords requested an Order of Possession for the rental unit, a Monetary Order to recover unpaid rent, and to be compensated for the cost of the filing fee. The Landlords’ Application was crossed with the Administrator’s Application and the matter was set for a participatory hearing via conference call.

Preliminary Matter

The Landlords attended the conference call hearing; however, the Administrator did not attend at any time during the 34-minute hearing. The Administrator was emailed a copy of the Notice of a Dispute Resolution Proceeding by the Residential Tenancy Branch on March 31, 2021; however, did not attend the teleconference hearing set for today at 9:30 a.m. The Landlord MB also testified that they served the Administrator their Notice of Dispute Resolution Proceedings package on May 28, 2021, by posting the package to the door of the rental unit. The Landlord submitted a Proof of Service document to support this.

Rule 7.3 of the *Residential Tenancy Branch 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 Administrator did not call into the conference, I dismiss the Administrator's Application without leave to reapply as the Administrator failed to attend the hearing to present the merits of their Application.

Issues to be Decided

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

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

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

Background and Evidence

Landlord MB testified that the tenancy originally began with Tenant JH (Deceased) on June 1, 2015 and continued on with annual renewals of a 1-year fixed term. The most recent Tenancy Agreement was established on June 1, 2020 for a fixed term ending on May 31, 2021. The monthly rent was \$1,370.00 and the Landlords collected and still hold a security deposit in the amount of \$625.00.

The Landlord MB submitted that the Administrator had advised the Landlords that he moved into the rental unit to care for his mother, Tenant JH (Deceased). Although unsure of the date, Landlord MB stated that she was advised by the Administrator in mid-March that Tenant JH had died "a couple of weeks ago."

Landlord MB submitted that there was some confusion as to whether and/or when the tenancy would end, based on the passing of Tenant JH. Landlord MB stated that, on April 20, 2021, they served a letter to the Administrator stating that they were prepared to allow him to stay in the rental unit until the end of the fixed term, being May 31, 2021, as long as the Administrator pays rent in accordance with the Tenancy Agreement.

The Landlords submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent, dated April 30, 2021 (the "10 Day Notice"). The 10 Day Notice was posted on the door of the rental unit and stated that rent was due as of April 1, 2021 and provided a move-out date of May 10, 2021.

The Landlords submitted documentary evidence including text messages to support their claim that the Administrator had not paid any rent throughout the months of April, May or June 2021.

The Landlords stated that the Administrator is still occupying the rental unit and as such, are requesting an Order of Possession and a Monetary Order for unpaid rent, in the amount of \$4,110.00.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant, in this case, the Administrator, must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

The Landlord testified, and provided undisputed documentary evidence to support their submission, that the Administrator did not pay rent when it was due and is in arrears for the amount claimed. I note that there is no evidence before me that the Administrator had a right under the Act to not pay the rent.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlord has met the onus of proving their claim for compensation for unpaid rent, in the amount of \$4,110.00.

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. Based on undisputed evidence, I find that the Administrator is deemed to have received the 10 Day Notice on May 3, 2021 and continued to occupy the rental unit without paying rent.

Section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

I find the 10 Day Notice, issued by the Landlord on April 30, 2021, complies with the requirements set out in Section 52.

I have dismissed the Administrator's Application and found that the 10 Day Notice is compliant with the Act. For these reasons and because the Administrator is still occupying the rental unit, I grant the Landlord an Order of Possession.

I find that the Landlord's Application has merit and that the Landlord is entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 72 of the Act.

Pursuant to section 72(2) of the Act, I authorize the Landlord to keep Tenant JH's security deposit in the amount of \$625.00, in partial satisfaction of the monetary claim.

Item	Amount
Unpaid Rent: April, May and June 2021	\$4,110.00
Recovery of Filing Fee for this Application	100.00
Less Security Deposit	-625.00
Total Monetary Order	\$3,585.00

A total monetary order, which is issued in conjunction with this Decision, is granted to the Landlord in the amount of \$3,585.00.

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 Administrator. Should the Administrator 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 \$3,585.00. In the event that the Administrator does not comply with this Order, it may be served on the Administrator, 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: June 28, 2021

Residential Tenancy Branch