



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, OPR, MNDC-S FF

Introduction

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the tenant;
- a monetary order for unpaid rent;
- compensation for a monetary loss or other money owed;
- authority to keep the tenant's security deposit to use against a monetary award; and
- to recover the cost of the filing fee.

The landlord's agent (agent), the tenant and the tenant's legal advocate (advocate) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Neither party raised any issue regarding service of the landlord's evidence and Application for Dispute Resolution, evidence, and Notice of Hearing (application package). The tenant did not submit evidence prior to the hearing.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the

evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit pursuant to their Notice?

Is the landlord entitled to monetary compensation or money owed from the tenant and to retain the tenant's security deposit to partially offset a monetary award?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

Neither party provided a copy of a written tenancy agreement.

The landlord's application said the tenancy began on January 1, 2017 and the tenant said the tenancy began on October 1, four or so years ago.

The landlord's application showed that the monthly rent owed by the tenant was \$2,800. The tenant said that this amount was incorrect, as his monthly rent has always been \$2,300.

The agent said he had not been supplied tenancy details or documents by the landlord and he would accept that the monthly rent was \$2,300, as stated by the tenant.

The agent submitted that on April 29, 2021, the tenant was served with the Notice, by personal service and registered mail, listing a total unpaid rent of \$8,580 due as of April 29, 2021. The effective vacancy date listed on the Notice was May 9, 2021. Filed in evidence was a copy of the Notice.

Filed into evidence by the landlord was a copy of a witnessed and signed proof of service of the Notice, showing personal service on the tenant on April 29, 2021.

The agent stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice within five (5) days.

The tenant confirmed he had not made any monthly rent payments since the issuance of the Notice.

The agent said the landlord was more concerned with possession of the rental unit than any other issue in their application.

The landlord did not file evidence showing a breakdown of their claim or a history of rent payments showing the outstanding balance.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

I have no evidence before me that the tenant applied to dispute the Notice and the tenant confirmed that he had not done so.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed rent when it was served, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service. The tenant confirmed receiving the Notice by registered mail in May and that he has not paid any rent since that time.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, in this case, May 9, 2021. I therefore order that this tenancy ended on May 9, 2021.

As a result, I find that the landlord is entitled to and I grant an order of possession of the rental unit pursuant to section 55(2) of the Act, **effective two days after service** of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is **cautioned** that costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Monetary claim-

As to the landlord's monetary claim, I find the evidence supports that the tenant owed some rent when the Notice was issued, but find the landlord submitted insufficient evidence to support what amount was owed in unpaid rent. The landlord was not present at the hearing and has not provided documentary evidence to their agent in support of their monetary claim. The landlord's monetary claim was inconsistent with testimony at the hearing.

I therefore dismiss the landlord's monetary claim, with leave to reapply.

As I have dismissed the landlord's monetary claim, with leave to reapply, I also dismiss their request to retain the tenant's security deposit, with leave to reapply.

I also find the landlord is entitled to \$100 for recovery of the filing fee, pursuant to section 72(1) of the Act.

I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of \$100.

Conclusion

The landlord's application for an order of possession of the rental unit and the filing fee has been granted.

The landlord's monetary claim for unpaid rent and to retain the tenant's security deposit is dismissed, with leave to reapply.

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: September 21, 2021

Residential Tenancy Branch