



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, FFT, OPRM-DR, OPR-DR, MNDCL, FF

Introduction

This review hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on February 16, 2021 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on February 18, 2021 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant is represented by an Agent hereinafter referred to as the “Tenant”.

Preliminary Matter

The Landlord states that they did not receive any documentary evidence from the Tenant, in relation to rents from February 2021 and forward, including evidence provided by the Tenant for their review consideration application. It is noted that in a Review Consideration Decision dated June 14, 2021 the Tenant provided documentary evidence in relation to 6 rent payments made for the period to and including July 2021.

On the basis of this evidence the original Decision and orders dated May 25, 2021 were set aside in the Review Consideration Decision. The Tenant states that after receipt of the Review Consideration Decision an evidence package was sent by registered mail to the Landlord on September 18, 2021. The Tenant states that they do not know who sent this package, do not know the contents of this package and do not know the address to which the package was sent.

Rule 3.14 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the Respondent no less than 14 days before the hearing. Given the Tenant’s vague evidence of service of a package to the Landlord and the Landlord’s evidence of having received no evidence package from the Tenant, in particular in relation to rents for the period February to July 2021 inclusive, I find on a balance of probabilities that the Landlord did not receive any evidence package from the Tenant. I therefore may not consider any documentary or digital evidence provided by the Tenant for this hearing in relation to rents for the period February to July 2021 inclusive. Only oral testimony from the Tenant will be considered.

The Tenant states that they are in the process of moving out of the unit and will be finished by Thursday October 7, 2021. The Tenant states that it no longer wishes to dispute the notice to end tenancy and agrees that the Landlord is entitled to an order of possession effective 1:00 p.m. Thursday October 7, 2021. The Landlord agrees to accept an order of possession for this date. Given this agreement I grant the Landlord an order of possession. As this matter has been resolved by agreement, I dismiss the Tenant’s claim to cancel the notice to end tenancy and for recovery of the filing fee. In effect the Tenant’s application is dismissed in its entirety.

Issue(s) to be Decided

Is the Landlord entitled to its monetary claim for unpaid rent?

Is the Landlord entitled to recovery of their filing fee?

Background and Evidence

The following are undisputed facts: the tenancy under written agreement started on January 25, 2021. Rent of \$5,500.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$2,750.00 as a security deposit.

The Tenant states that they are not totally familiar with the facts for this dispute. The Tenant states that rent of \$5,500.00 for February 2021 was paid by wire transfer made February 12, 2021 and paid out February 17, 2021. The Tenant states that rents for April to July 2021, inclusive, were paid by cheques that the Landlord cashed. The Tenant states that it knows this as the Tenant's nephew or cousin had set up a chequing account and made these payments. The Tenant agrees that no rents were paid for August and September 2021.

The Landlord states that they did not receive any rents by wire transfer or otherwise for the period February to September 2021, inclusive. The Landlord's application claims unpaid rents to and including April 2021. The Landlord did not amend its application to seek rents past April 2021 but confirms that it is pursuing rents to and including September 2021, the period that the Tenant continued occupying the unit. The Landlord confirms that it has no other claims to be considered.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Rule 4.2 of the RTB Rules of Procedure provides that in circumstances that that can be reasonably anticipated, such as when the amount of rent owing has increased since the time the application for dispute

resolution was made, the application may be amended at the hearing. If such an amendment is sought at the hearing an amendment to an application for dispute resolution need not be submitted or served. Section 58(2)(a) of the Act provides that the director must not determine a dispute if the amount claimed, excluding any amount claimed under section 51 (1) or (2) *[tenant's compensation: section 49 notice]*, 51.1 *[tenant's compensation: requirement to vacate]* or 51.3 *[tenant's compensation: no right of first refusal]*, for debt or damages is more than the monetary limit for claims under the *Small Claims Act*. The monetary limit is \$35,000.00.

Given the Tenant's vague and unsupported evidence of having made rent payments and the Landlord's evidence that no rents were paid I find on a balance of probabilities that rents for the period February to September 2021 inclusive were not paid. Although the Landlord did not amend its application to seek a greater amount of rent than \$16,500.00, I consider that the Landlord did ask to increase that rental claim at the hearing. As the Tenant has occupied the rental unit to date with unpaid rents accumulating, I find that the Landlord is entitled to an amendment of its claim for unpaid rent up to the limit of \$35,000.00. I calculate that the Landlord is entitled to unpaid rent for the period February to August 2021 inclusive in the amount of **\$33,000.00**. The Landlord is also entitled to unpaid rent of **\$1,833.30** (183.33 x 10 days) for the period September 1 to 10, 2021 inclusive. The Landlord has leave to reapply for unpaid rents from September 11, 2021 and forward to the date of possession of the unit.

As the Landlord has been successful with its claims, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$34,933.30**. Deducting the security deposit plus zero interest of **\$2,750.00** from this entitlement leaves **\$32,183.30** owed by the Tenant to the Landlord.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on October 7, 2021. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I Order the Landlord to retain the security deposit plus interest of \$2,750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$32,183.30**. If necessary, this order may be filed in the 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 RTB under Section 9.1(1) of the Act.

Dated: October 6, 2021

Residential Tenancy Branch