



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 02, 2021 (the “Application”). The Tenant applies as follows:

- For a repair order
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 25, 2021 (the “Notice”)

The Tenant appeared at the hearing. The Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The Landlord provided the correct spelling of their name and the correct rental unit address, both of which are reflected on the front page of this decision.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset that I would consider the dispute of the Notice and dismiss the request for a repair order as it is not sufficiently related to the dispute of the Notice. The request for a repair order is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The Tenant did not submit evidence prior to the hearing. The Landlord did submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that the Tenant never served them with the hearing package and that they got this from the RTB in September. The Landlord confirmed they knew about the Application and were prepared to proceed on the hearing date.

The Tenant testified that they never received the Landlord's evidence. The Landlord testified that their evidence was sent to the Tenant at the rental unit by registered mail on October 08, 2021 and that Tracking Number 696 relates to this.

The Landlord submitted a photo of the package sent to the Tenant and the registered mail receipt with Tracking Number 696 on it. I looked Tracking Number 696 up on the Canada Post website which shows the package was sent October 08, 2021 and notice cards were left in relation to the package October 12 and 25, 2021.

The Tenant testified that they had not received anything but also testified that they have never checked their mail.

Based on the testimony of the Landlord, photo, registered mail receipt and Canada Post website information, I am satisfied the Tenant was served with the Landlord's evidence in accordance with section 88(c) of the *Act* on October 08, 2021. The Tenant cannot avoid service by failing to check their mail regularly. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the evidence on October 13, 2021. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service. In the circumstances, the Landlord's evidence is admissible and I have considered it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 15, 2021 and is for a fixed term ending May 31, 2022. Rent is \$13,500.00 per month due on the first day of each month. The Tenant

paid a \$6,750.00 security deposit. The agreement includes an addendum with term 19 which states in part:

...the tenant agrees to provide the landlord...half month rent of May \$6,850.00...

The Notice was submitted as evidence. The Notice states that the Tenant failed to pay \$20,550.00 in rent due June 01, 2021. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of July 05, 2021. The Tenant did not raise an issue with the form or content of the Notice when asked.

The parties agreed the Notice was served on, and received by, the Tenant June 25, 2021.

The RTB file shows the Tenant did not pay the filing fee for the Application until July 02, 2021.

The Landlord relied on a text message with a summary of payments made by the Tenant throughout the tenancy showing as follows:

- May 01, 2021 \$6,750.00 for security deposit
- July 25, 2021 \$1,500.00 rent
- August 06, 2021 \$1,000.00 rent
- August 06, 2021 \$2,920.00 rent
- August 14, 2021 \$1,000.00 rent
- August 21, 2021 \$500.00 rent

The Tenant agreed that the above summary is correct.

The parties agreed no rent had been paid when the Notice was issued. The Landlord testified that the Tenant provided rent cheques which bounced. The parties agreed no rent has been paid since August 21, 2021.

I reviewed the six reasons a tenant can withhold rent with the Tenant. The Tenant testified that the emergency repairs provision of the *Act* applies but they cannot recall the details of this. The Tenant testified that the Landlord agreed to the Tenant withholding rent.

The Landlord denied that they agreed to the Tenant withholding rent.

In relation to the basis for disputing the Notice, the Tenant testified about their business shutting down twice and getting COVID-19 twice.

The Landlord sought an Order of Possession effective two days after service on the Tenant.

Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may 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.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution...

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenant a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenant to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenant withholding rent.

I am satisfied based on the written tenancy agreement and testimony of the parties that the Tenant is required to pay \$13,500.00 in rent per month by the first day of each month. I find based on the written tenancy agreement that the Tenant owed half a month's rent for May of 2021 given the tenancy started May 15, 2021. I find half a month's rent is \$6,750.00 and not \$6,850.00 as noted in term 19 of the addendum.

I am satisfied based on the testimony of the parties that no rent had been paid when the Notice was issued.

I do not accept that the Tenant had authority under the *Act* to withhold rent. I do not accept that the emergency repairs section of the *Act* applies given the Tenant provided no details about this and did not point to any documentary evidence to support this. I do not accept that the Landlord agreed to the Tenant withholding rent because the parties disagreed about this and the Tenant did not point to any documentary evidence to support this. The Tenant did not provide any other valid basis under the *Act* for

withholding rent. I find section 46(3) of the *Act* does not apply and the Tenant was required to pay rent pursuant to section 26(1) of the *Act*.

Given no rent had been paid by June 25, 2021, when the Notice was issued, the Landlord was entitled to serve the Tenant with the Notice.

Based on the testimony of the parties, I accept that the Notice was served on the Tenant June 25, 2021.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on June 25, 2021 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I find the Tenant did not pay the outstanding rent by June 30, 2021 because both parties agreed the text message with a summary of payments is accurate and it shows that the next rent payment made after the Notice was issued was July 25, 2021 for only \$1,500.00.

I find the Tenant did not dispute the Notice by June 30, 2021. Rule 2.6 of the Rules states:

2.6 Point at which an application is considered to have been made

The Application for Dispute Resolution has been made when it has been submitted and either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application.

If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.

(emphasis added)

The Tenant did not pay the filing fee until July 02, 2021 and therefore disputed the Notice late. The Tenant did not apply to extend the timeline for disputing the Notice and therefore I have not considered this.

Given the Tenant did not pay or dispute the Notice by June 30, 2021, pursuant to section 46(5) of the *Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended on July 05, 2021, the effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by July 05, 2021 as the tenancy ended on this date. The Tenant has been overholding since July 06, 2021.

Given the above, the Tenant's dispute of the Notice is dismissed without leave to re-apply. I also note that the Tenant did not provide any valid basis for disputing the Notice and therefore the Tenant's dispute of the Notice would have been dismissed even if the conclusive presumption did not apply.

Section 55 of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I have found the Notice complies with section 52 of the *Act*. I have also dismissed the Tenant's dispute of the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Pursuant to section 55(1.1) of the *Act*, the Landlord is entitled to a Monetary Order for unpaid rent. Pursuant to RTB Policy Guideline 3, the Landlord is only entitled to recover

“unpaid rent” being rent due during the tenancy. Here, the Landlord can recover rent from May 15, 2021, the start of the tenancy, to July 05, 2021, the end of the tenancy. The Landlord is not entitled to recover compensation for overholding under section 55(1.1) of the *Act*. However, the Landlord can seek compensation for overholding pursuant to section 57 of the *Act* in their own Application for Dispute Resolution. I note that pursuant to section 58(2)(a) of the *Act*, the RTB cannot consider claims over \$35,000.00.

Based on the testimony of the parties and the text message with a summary of payments, I find the Landlord is entitled to recover the following unpaid rent:

- May 15, 2021 to May 31, 2021: \$6,750.00
- June: \$13,500.00
- July 01, 2021 to July 05, 2021: \$2,177.41
- Subtotal = \$22,427.41
- - \$6,920.00 in rent paid
- Total = \$15,507.41

The Landlord is issued a Monetary Order for \$15,507.41 pursuant to section 55(1.1) of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the BC Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order in the amount of \$15,507.41. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the BC Provincial Court (Small Claims) 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 *Act*.
Dated: October 29, 2021