



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR MNR-DR FFL

Introduction

This matter originally proceeded by way of Direct Request proceeding seeking remedy under section 55(4) of the *Residential Tenancy Act* (Act) and dealt with an Application for Dispute Resolution (application) by the landlords for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2021 (10 Day Notice), for a monetary order for unpaid rent and to recover the cost of the filing fee. On August 12, 2021, an adjudicator adjourned the matter to a participatory hearing which was held on this date, Tuesday, November 30, 2021 at 11:00 a.m. Pacific Standard Time. An Interim Decision dated August 12, 2021 was issued, which should be read in conjunction with this decision.

On this date, November 30, 2021 the landlords attended the participatory hearing and were affirmed. The landlords were assisted by their daughter, JS (agent). During the hearing the landlords and agent were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated August 13, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenant by registered mail on August 18, 2021. The registered mail tracking number has been included on the style of cause for ease of reference. According to the Canada Post online registered mail tracking website, the tenant signed for and accepted the registered mail package, which was addressed to the rental unit address, on September 8, 2021. The agent stated that the tenant continues to occupy the rental unit as of the date of the hearing.

Based on the above and without any evidence before me to prove to the contrary, I accept that the tenant was successfully served with the Notice of Hearing, application and documentary evidence on September 8, 2021, which was the date the tenant signed for and accepted the registered mail package. Given that the tenant did not attend the hearing, I consider this matter to be unopposed by the tenant and the hearing proceeded without the tenant present pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rule) 7.1 and 7.3, which address the consequences for failing to attend a dispute resolution hearing.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them.

The landlords testified that in addition to the rent owed in the original claim for \$10,100.00, the tenant has subsequently not paid the rent for August, September, October and November of 2021 at \$2,500.00 per month so requested to amend their application to the current amount of rent owed, \$15,430.00 as of the date of this hearing. The landlords also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$10,100.00 to \$15,430.00 before the filing fee. The landlords also stated that they would like to offset any amount owing with the tenant's \$1,000.00 security deposit, if possible.

The landlords and agent were informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The landlords and agent were also informed that if any recording devices were being used, they were directed to

immediately cease the recording of the hearing. In addition, the landlords and agent were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlords and agent did not have any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the landlords confirmed their email address and the email address of the tenant at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The tenant will be sent a copy of the decision by email.

Issues to be Decided

- Are the landlords entitled to an order of possession under the Act?
- Are the landlords entitled to a monetary order for unpaid rent or loss of rent under the Act, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenant agreement was submitted in evidence. A month-to-month tenancy began on December 10, 2018. Monthly rent in the amount \$2,500.00 is due on the first day of each month. According to the landlords, the tenant continues to occupy the rental unit.

The agent testified that the 10 Day Notice was served on the tenant at the rental unit by posting to the tenant's door on July 2, 2021. The 10 Day Notice indicates that \$7,730.00 was owed in rent as of July 1, 2021. The landlord stated that the tenant continues to occupy the rental unit and a total of \$15,430.00 in unpaid rent. The agent stated that this amount includes all of the partial payments made by the tenant.

The landlords testified that the tenant did not dispute the 10 Day Notice or pay the rent owing as listed on the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was July 12, 2021, which has passed.

The landlord is seeking an order of possession, a monetary order for unpaid rent, to retain the security deposit towards any amount owing, and to recover the cost of the filing fee.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlords and agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession – I accept the landlords' undisputed testimony and I find that the tenant failed to pay any of the amount claimed by the landlord as owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. Section 90 of the Act states that documents posted to the door are deemed served 3 days after they are posted. Therefore, I find the tenant was deemed served with the 10 Day Notice as of July 5, 2021. Section 53 of the Act automatically corrects the effective vacancy date and as a result, I find the effective vacancy date automatically corrects from July 12, 2021 to July 15, 2021. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was July 15, 2021. The tenant continues to occupy the rental unit. Therefore, I **grant** the landlord an order of possession effective **two (2) days** after service on the tenant.

I find the tenancy ended on **July 15, 2021** and that the tenant has overheld the rental unit since that date.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlords to be unopposed by the tenant. I accept the undisputed testimony of the landlords that the tenant owes rent as claimed in the amount of \$15,430.00 and as noted above.

Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. I find the landlords have met the burden of proof and has established a monetary claim of **\$15,430.00** as indicated above.

As the landlords have succeeded with their application, I grant the landlords the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act. This increases the monetary claim to **\$15,530.00**.

Pursuant to sections 38 and 62(3) of the Act, I authorize the landlords to retain the tenant's full security deposit of \$1,000.00 which has accrued no interest to date, which reduces the total amount owing by the tenant to the landlord in the amount of \$14,530.00. I grant the landlords a monetary order pursuant to section 67 of the Act in the total amount of **\$14,530.00** owing by the tenant to the landlords.

I caution the tenant not to breach section 26 of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) days after service upon the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. The tenancy ended on July 15, 2021.

The landlords have established a total monetary claim of \$15,530.00 and have been granted authorization to retain the tenant's full security deposit of \$1,000.00 leaving a monetary balance owing by the tenant to the landlord of \$14,530.00. I grant the landlords a monetary order in that amount. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is cautioned that they can be held liable for all costs related to the enforcement of the monetary order and the order of possession.

The tenant has been cautioned as described above.

The decision and orders will be emailed to the landlords for service on the tenant. The tenant will be sent the decision by regular mail as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 30, 2021

Residential Tenancy Branch