



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession, pursuant to having served a 10 Day Notice to End Tenancy for Unpaid Rent (with repayment plan) that was not paid in the required time; and to recover the \$100.00 cost of his Application filing fee.

The Tenant and an agent for the Landlord, J.J. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said he had received the Application and the documentary evidence from the Agent and had reviewed it prior to the hearing. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Agent provided his email address in the Application and he confirmed it in the hearing. The Tenant said he did not have an email address; therefore, I said the Decision would be mailed to him at the rental unit address. The Parties also confirmed their understanding that the Decision would be sent to both Parties this way, and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The Tenant said that he had difficulty understanding English, but he said he had not brought anyone else to assist him in this regard. He did not ask for an adjournment, so that he could find someone to help him. In order to assist the Tenant, I spoke more slowly than normal, and when he did not understand something, I rephrased it until he said that he understood.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on February 1, 2021, with a monthly rent of \$850.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$425.00, and no pet damage deposit.

In the Notice, the Landlord explained the claim, as follows: "The tenant has not made any payments for rent since May 01, 2021, [and] has been causing issues of damaging property and verbal abuse."

The Agent had not submitted a copy of the 10 Day Notice, however, he read the contents to me in the hearing. He said the 10 Day Notice was signed and dated May 5, 2021, it has the rental unit address, it was served in person on May 7, 2021, with an effective vacancy date of May 12, 2021, and it was served on the grounds that the Tenant failed to pay \$850.00 in rent to the Landlord when it was due on May 1, 2021. The Tenant confirmed having received this 10 Day Notice.

In the hearing, the Agent said he seeks an order of possession, for the following reasons:

Originally for the 10 Day Notice for not paying rent, but then my father, the Landlord, and the Tenant had a conflict with his friend, and from there on it grew to more trouble than just the rent.

I asked the Agent what sort of trouble, and he said:

[The Tenant] and his friend were drinking and getting loud, so my Dad asked them to quiet down - continue their gathering - but quiet down. His friend got aggravated and attacked my Dad, and he hit back, and then we called the police.

The Tenant agreed that this incident happened, and he said it was on May 1, 2021; however, he said his friend and the Landlord went outside and were fighting, so he called the police.

The Tenant also said that while he paid rent in May and June, he did not pay in July and August 2021. He said that the Landlord told him he would be leaving, therefore, he did not have to pay rent; however, the Tenant did not leave, therefore, he had to pay rent. He said the Landlord would not take his rent payment. The Tenant said that he paid extra in September, October, and November, and that he has paid back July's rent, but not August's yet.

I offered the Parties an opportunity to make any last statements before the hearing ended, and the Agent said the following:

On top of the incident on May 1, and the rent issue, there were multiple occurrences where the Tenant would sleep in all day and was awake at night, banging on doors, making noise. My side of the house and his suite - we share a laundry room. He'd go in there and bang the machine. The police have records of every incident. He has also damaged some parts of the property. I believe I have all these issues recorded in the RTB, as well. Most should be video evidence.

I advised the Agent that there is no video evidence before me from the Landlord.

The Tenant's last statements were, as follows:

Not true. I did pay the rent. They say I'm loud at night time. Also, I say again, September, I pay \$1,000.00 - \$150.00 extra; October: \$1,200.00 – \$350.00 extra; November: \$1,200.00 – \$350.00 extra. Totally \$850.00. I pay \$850.00 extra. That's one month extra. I still owe one month. In December I pay extra again.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Rule 6.6 states that 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 states: “A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord. Pursuant to the agreement of the Parties, I find that the Tenant owes the Landlord \$850.00 in unpaid rent from the Tenant. I, therefore, award the Landlord with **\$850.00** from the Tenant, pursuant to sections 26 and 67 of the Act.

Section 46 of the Act states that 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. Section 46 also states that the 10 Day Notice must comply with section 52, as to form and content.

Based on the evidence before me, it is unclear in which months the Tenant was behind in paying his rent, as the Landlord says it was May and June 2021, but the Tenant says it was July and August 2021. However, I find that the Parties agree that rent was not paid for at least two months.

Further, I find that the Parties agree that there was an incident on May 1, 2021, in which the Landlord was involved in a scuffle with the Tenant’s friend. The Tenant acknowledged that the Landlord had come down to ask them to be quieter; however, there is disagreement as to who threw the first punch – the Landlord according to the Tenant, or the Tenant’s friend, according to the Landlord. I find it more likely than not that a Landlord in this situation would not imagine that he would become involved in a fight with a stranger for merely asking them to be quieter.

I find in this set of circumstances that the Landlord has grounds to evict the Tenant. The grounds include unpaid rent first. Another ground is that the Tenant or persons

permitted on the residential property by the Tenant disturbed the Landlord and other occupants with noise, and on at least one occasion, violence. I, therefore, I find that the Landlord is entitled to an order of possession, and I award the Landlord with an **Order of Possession** of the rental unit, pursuant to section 55 of the Act. This Order will be, **effective two days after the Order is served** to/received by the Tenant, given that the effective date of the 10 Day Notice has passed.

Summary and Set Off

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant's \$425.00 security deposit in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain **\$425.00** of the Tenant's security deposit, and I award the Landlord **\$425.00** for the remaining amount owed by the Tenant to the Landlord for unpaid rent, pursuant to section 67 of the Act.

Pursuant to section 55 of the Act, I grant the Landlord an **Order of Possession** of the rental unit from the Tenant, **effective two days after the Order is served** or deemed served to the Tenant.

Given the Landlord's success in his Application, I also award the Landlord recovery of the \$100.00 Application filing fee from the Tenant, pursuant to section 72 of the Act. I, therefore, grant the Landlord a **Monetary Order of \$525.00** from the Tenant, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in his Application, as he provided sufficient evidence to meet his burden of proof on a balance of probabilities. The Landlord is awarded \$850.00 from the Tenant for unpaid rent, and recovery of the \$100.00 Application filing fee. The Landlord is authorized to retain the Tenant's \$425.00 security deposit in partial satisfaction of this award. I grant the Landlord a **Monetary Order of \$525.00** for the remaining amount owed by the Tenant to the Landlord in this matter.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided

with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 29, 2021

Residential Tenancy Branch