



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPN

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on November 22, 2021. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- an order of possession based off a written Notice given by the Tenant to the Landlord.

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's application and evidence package when it was served to him in person. I find the Landlord sufficiently served the Tenant with this Notice of Hearing and evidence package. The Tenant provided some evidence to the RTB but failed to serve any of these documents to the Landlord, in accordance with the Rules of Procedure and the Act. As stated in the hearing, the Tenant was required to ensure his evidence was served to the Landlord no later than 7 days before the hearing. The Tenant did not explain why he could not do so. I find the Tenant's documentary evidence is not admissible, and will not be considered.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Landlord applied for an order of possession based off a Tenant's Notice to End Tenancy. However, in the hearing, the Landlord explained that he was only seeking an

order of possession based off the 10 Day Notice that was issued in October 2021. As such, I hereby amend the Landlord's application accordingly, and will only consider evidence that relates to the Landlord's application for an order of possession based off the 10 Day Notice.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

The Landlord provided a copy of the tenancy agreement into evidence, which shows that the tenancy started in January 2020, and monthly rent was set at \$750.00. The Landlord collected a security deposit in the amount of \$375.00. At the start of the tenancy the Tenant was co-tenants with the person who attended the hearing with him, R.J. The Tenants were both named on the same tenancy agreement. R.J. lived in the rental unit from January 2020, until October 2020. The Tenant named on this application remained living in the rental unit following the departure of the other co-tenant.

The parties both agreed that the Tenants paid \$750.00 per month from January 2020, until September 2020. Following this, the Landlord stated that the Tenant only ever paid \$550.00 per month, in partial denominations. The Landlord stated that he never made any agreement with the Tenant to modify the amount of rent due from \$750.00. The Landlord stated that due to the pandemic, he did not pursue eviction until this fall, despite the fact that the Tenant was behind on rent by \$200.00 each month for over a year.

On October 4, 2021, the Tenant received a copy of the 10 Day Notice, showing that he was behind in rent by \$3,400.00. The Tenant stated he did not dispute the Notice, despite the fact he does not agree he owes any money. The Tenant stated he had a verbal agreement with the Landlord that he only had to pay \$550.00 per month, starting October 2020. However, no agreement was ever signed by the parties following the initial tenancy agreement, and the Landlord denies ever saying he agreed to allow the Tenant to pay \$550.00 rather than \$750.00.

Analysis

Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 46(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that there is insufficient evidence that monthly rent was ever changed from \$750.00, which is what was listed on the written tenancy agreement, to \$550.00. The Tenant had no admissible written documentary evidence showing rent was \$550.00, not \$750.00. I find the Tenant's verbal testimony is insufficient to prove that an agreement was reached about reduced rental amounts, from October 2020 onwards.

I find it more likely than not that rent remained at \$750.00, as laid out in the tenancy agreement and that the Tenant only paid \$550.00 from October 2020 onwards.

I note the Tenant received the 10 Day Notice on October 4, 2021, which was issued due to the shortfall of \$200.00 per month. I note the Tenant specifically stated he did not dispute the Notice, despite the fact he did not agree with it.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. It does not appear the outstanding rent was paid off within 5 days after receiving the Notice, and I find it more likely than not that the Tenant had a balance owing at the end of the 5 day window. Since rent was not paid in full, within 5 days of receiving the Notice, and since the Tenant failed to dispute the Notice with our office, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

Although I am satisfied that some rent is owing, I note the Landlord did not apply for an order for monetary compensation, as such, the actual amount owing as of the time of this hearing will not be a determined.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 *Residential Tenancy Act*.

Dated: November 22, 2021

Residential Tenancy Branch