



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Highland Court Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, 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 for unpaid rent, further to having served a 10 Day Notice dated September 30, 2021 ("10 Day Notice"); with a request for a monetary order for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of their Application filing fee.

The Tenant and an agent for the Landlord, B.T. ("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 and my questions. 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 Landlord 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 confirmed this address in

the hearing. The Tenant provided his email address in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties 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.

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 fixed-term tenancy began on December 1, 2019, ran to November 30, 2020, and then operated on a periodic or month-to-month basis. They agreed that pursuant to the tenancy agreement, the Tenant must pay the Landlord a monthly rent of \$1,045.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$552.50, and no pet damage deposit, and the Landlord confirmed that he still holds the security deposit in full.

The Landlord said that the Tenant failed to pay rent, and he confirmed the details of the 10 Day Notice that he served to the Tenant. He noted that the 10 Day Notice was signed and dated September 30, 2021, it has the rental unit address, it was served in person on September 30, 2021, and that it has an effective vacancy date of October 10, 2021. The 10 Day Notice was served on the ground that the Tenant failed to pay the Landlord \$1,045.00 of rent that was due on September 1, 2021.

In the hearing, the Landlord said:

It's a standard fixture of a tenancy agreement that rent is due on the first. [The Tenant] has not paid rent for August, September, October, November, or December. The outstanding amount owing now is \$5,225.00 – he has not paid it at this point.

The Tenant said:

What he said is true, but I have quite a few reasons for not paying the rent, such

as they didn't have a building manager from July to the end of September. My apartment flooded in July, and they ignored me to the end of September. The air conditioning unit was broken – never fixed. There is mould developing in the bathroom - never fixed. I've had an ant infestation since I moved in. This was never addressed. The kitchen sink was broken for a year. They did send a maintenance person up to fix it, but he fixed only the sink.

I asked the Tenant why he had not applied for dispute resolution to have these matters resolved. He said: "No, I did not. It's not the first time they ignored me for months on end and have no building manager. So, I ignored them like they did me. This is the second time they've ignored me; I got fed up.

The Agent said:

Re maintenance, it's part of our system that when someone needs a problem fixed, they put in a blue form on paper. I can't speak to all of what he said... we have had no maintenance requests on file. I have no record of what he's talking about.

Analysis

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

Section 26 of the Act confirms that a tenant must pay rent when due under a tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The Tenant did not provide any evidence that he had a decision of the Director authorizing him to deduct a portion of his rent.

Further, section 46 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by issuing a notice to end tenancy for unpaid rent. A tenant has five days after receipt of a 10 Day Notice to pay the overdue rent or dispute the notice by applying for dispute resolution. Failure to pay the overdue rent or dispute the notice results in the conclusive presumption that the tenancy ends on the effective date of the notice.

In this case, I find the Tenant received the 10 Day Notice on September 30, 2021. Accordingly, and pursuant to section 46 (4) of the Act, the Tenant had until October 5

2021, to dispute the 10 Day Notice by applying for dispute resolution or paying the outstanding rent in full. I also find that the 10 Day Notice is consistent with section 52 of the Act.

I find that the undisputed evidence before me is that the Tenant has not paid his overdue rent, which amounts to \$5,225.00.

Accordingly, I award the Landlord with **\$5,225.00** for unpaid rent from the Tenant. I authorized the Landlord to retain the Tenant's **\$552.50** security deposit in partial satisfaction of this award, leaving **\$4,672.50** of this award outstanding.

Given their success in this proceeding, I also award the Landlord with recovery of their **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

After deducting the security deposit and adding the \$100.00 filing fee, I, therefore, award the Landlord with a **Monetary Order** of **\$4,772.50** from the Tenant, pursuant to sections 26 and 67 of the Act.

As rent has not been paid when due, I find further that the Landlord is entitled to an order of possession. Pursuant to section 55 of the Act, I, therefore, grant the Landlord an **Order of Possession** of the rental unit. Given that the effective vacancy date on the 10 Day Notice has passed, the Order of Possession will be **effective two days after it is deemed served** on the Tenant, pursuant to section 55 of the Act.

Regardless of the Landlord's success in this proceeding, I was concerned to hear about the conditions in which the Tenant said he has lived in the residential property. **The Landlord is cautioned** to abide by their obligations under section 32 of the Act. The Landlord must maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant. Had this Tenant applied for dispute resolution, seeking RTB Orders for repairs throughout his tenancy, the Landlord may have had to comply with their obligations under the Act, which may have resulted in the Tenant consistently paying his rent in full. Instead, the Landlord did without rent for five months, and now has to find another tenant for this residential property in questionable condition.

The Landlord is advised that the RTB had a Compliance and Enforcement Unit which has the power to **fine landlords up to \$5,000.00 a day** for violations of the Act, Regulation and/or Policy Guidelines.

Conclusion

The Landlord is successful in their Application for an Order of Possession and a monetary award of \$5,225.00 against the Tenant for unpaid rent owing, as the Landlord provided sufficient evidence to meet their burden of proof on a balance of probabilities. The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenant. The Landlord is authorized to retain the Tenant's \$552.50 security deposit in partial satisfaction of these awards.

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.

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order of **\$4,772.50**. 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 Small Claims Division of the Provincial Court 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: December 22, 2021

Residential Tenancy Branch