



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on July 16, 2021 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of the August 16, 2021 interim decision of an Adjudicator. The Adjudicator determined that the Landlord’s application could not be considered by way of a Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the Landlord. The Adjudicator reconvened the Landlord’s application to a participatory hearing as they were not satisfied with the completion of the tenancy agreement.

After this, the Landlord filed a second Direct Request Application on October 1, 2021 seeking an order of possession, and a monetary order for unpaid rent and the filing fee. This was joined to the participatory hearing of the Landlord’s prior Application from July.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on May 14, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Preliminary Matter

In the hearing, the Landlord provided that they delivered notice of this dispute resolution to the Tenant by attaching the document to the rental unit door. This was immediately after they received the notice from the Residential Tenancy Branch on October 8, 2021.

They provided the detail that they attached the document, then knocked several times with no answer. When they attended upon the rental unit the next day, they observed the document was not anymore attached to the rental unit door. This particular agent of the Landlord in the hearing could not speak to the July Application, made by a different agent.

The Landlord specified that the material they served included their prepared evidence for this matter.

From what the Landlord presents here under affirmed oath, I am satisfied they served the Tenant notice of this hearing in a method prescribed by s. 89(2)(d) of the *Act*. I consider the documents received by the Tenant on October 11, 2021, as per s. 90(c) of the *Act*.

Issues to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 55(4) of the *Act*?

Is the Landlord entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord submitted a copy of the Residential Tenancy Agreement. This shows the start of tenancy date was October 1, 2011. The rent at the time of the hearing was \$892.95 per month. In the hearing the Landlord testified that they are working for the current property management company that had changed sometime after the original company signed the agreement with the Tenant in 2011. The agreement specifies: "LATE PAYMENT OF RENT CAN BE REGARDED AS A BREACH OF CONTRACT AND THEREFORE GROUNDS FOR NOTICE OF TERMINATION."

The Landlord applied for an order of possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") issued on June 6, 2021, and September

10, 2021. In June the unpaid rent amount was \$1,648.60 as indicated on that document; in September the amount was \$382.45 as of September 1, 2021.

For the September 2021 10-Day Notice, the Landlord provided a separate Proof of Service document showing that they served it at 11:00am on September 10. They attached the full three-page document to the Tenant's door and a witness signed to indicate they observed this.

The Landlord reviewed the subsequent history of rent payments. In November the Tenant paid \$700, and the ministry-supported payments made on the Tenant's behalf came in for October, November, and December. They provided the outstanding rent owing balance of \$766.30. The Landlord provided that the Tenant remains in the rental unit.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the Landlord's oral testimony on its' terms and the conditions of how it was started with the Tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the Landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment.

The *Act* s. 46 provides 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 a tenant receives the notice.

Following this., s. 46(4) says that within 5 days after receiving a notice under this section, a tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Further, s. 46(5) says that 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 subs.(4), the tenant is conclusively presumed to have accepted that the tenancy ends

on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Based on the submissions by the Landlord, I find they served the full, three-page 10-Day Notice to the Tenant on September 10, 2021. As shown in the Landlord's prepared ledger, the Tenant failed to pay the rent owing by September 18, 2021, within the five days granted under s. 46(4). This end-date accounts for the 3 days' deemed served after service of the 10-Day Notice by attaching it to the door.

Based on the foregoing, I find that the tenant is conclusively presumed under s.46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 20, 2021.

The amount of rent that the Tenant owes has increased since the time the Landlord filed their Application. This is a circumstance that can reasonably be anticipated, and for this reason I allow the amendment to the rent amount owing. I so award the Landlord \$741.30. This is subtracting a \$25 late NSF fee, as indicated by the Landlord, and not shown in the tenancy agreement. The Tenant is legally obligated to pay this amount.

Because they were successful in one of their two Applications, I so award the Landlord \$100 for the Application filing fee. I dismiss the July 16, 2021 Application, with no recovery of that filing fee.

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$841.30, for rent amounts owing, and recovery of the filing fee for this hearing application. 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 made on authority delegated to me by the Director of the Residential Tenancy Branch under s.9.1(1) of the *Act*.

Dated: December 03, 2021