



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kamloops & District Elizabeth Fry
Society and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on November 29, 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 Residential Tenancy Branch advised the Landlord of the need for a participatory hearing in this situation where there was no printed tenancy agreement. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Branch* (the “Act”) on January 27, 2022. In the conference call hearing I explained the process and provided the parties the opportunity to ask questions.

The Landlord here gave the Tenant notice of this hearing in person. They provided a Proof of Service of that transaction that shows a witness to the service, who affirmed this with their signature. The Tenant acknowledged they received this from the Landlord on December 8, 2021. The Tenant signed the same Proof of Service on that date. The Landlord’s service included their prepared evidence. For this hearing, the Tenant did not prepare documents in advance for evidence.

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 or unpaid rent pursuant to s. 67 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

Neither party provided a copy of a written tenancy agreement. The Landlord provided basic details of the verbal agreement between the parties, and the Tenant confirmed the same. The Tenant provided that the agreement started for May 1, 2020; however, they moved into the unit on May 15. They confirmed the rent amount was \$375 per month, and they had this set up for auto-withdrawal from their bank.

The Landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). They served this in person to the Tenant on November 12, 2021. The Landlord provided a Proof of Service document showing the Tenant signed their receipt of this document on that date. This document also bears a witness signature to attest to their observation of the same.

The Landlord provided a copy of the 10-Day Notice. It provides that the Tenant had five days from the date received to pay the rent in full or apply for dispute resolution, or the tenancy would end on the vacancy date indicated, November 22, 2021. In the hearing, the Tenant confirmed they did not apply to dispute the 10-Day Notice in that allotted timeframe.

The reason for the Landlord serving the 10-Day Notice, as provided on page 2 of the document is the accumulated unpaid rent due on November 1, 2021. This amount is \$1,925. The Landlord provided an account showing the rent amount owing from September 1, 2021 (\$1,175), October 1 (\$1,550) and November 1 (\$1,925), with no rent payments for those months. After this the Tenant did not pay rent for December 2021, bring the balance outstanding to \$2,300. The Tenant paid rent for January 2022 in full.

The Landlord provided that they gave reminders to the Tenant via phone calls during this time. The Tenant thought the rent was automatically taken from their account. They were not aware of a problem until the Landlord visited in November. They pledged their willingness to pay this amount owing, but at \$1,000 or \$750 amounts until the balance was completely paid.

The Landlord confirmed they wished to end the tenancy; ultimately this would assist the Tenant to find a more supportive environment. They set out their current efforts at finding alternative living arrangements.

Analysis

In the hearing, the Landlord provided the basic details of the ongoing tenancy, and the Tenant confirmed those details. I am satisfied that an agreement exists and both parties know the terms and conditions therein. Based on the agreement of the parties, I find an agreement was in place and clearly the parties know the amount of rent and the schedule for payment.

The Act s. 46 states 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.

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.

With s. 46(5), 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 subsection (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 here, I find they provided the 10-Day Notice in person to the Tenant on November 12, 2021. The tenant failed to pay the rent owing by November 17, within the five days. The Tenant in the hearing confirmed they did not apply to dispute the 10-Day Notice within the five-day period.

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, November 22, 2021. In line with this, I grant the landlord an Order of Possession.

The Tenant did not dispute the accounting of the Landlord presented in the hearing; therefore, I find Landlord's monetary claim is valid.

I find that the Tenant is obligated to pay \$2,300, as per the tenancy agreement. The Landlord has established their claim for this amount; I grant this amount in a Monetary Order to the Landlord.

Because the Landlord was successful in their Application, I add the \$100 Application filing fee award to them.

Conclusion

I grant an Order of Possession to the landlord **effective 1:00pm on February 28, 2022**. The Landlord must service the Order of Possession 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 sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,400, for rent owed, and recovery of the filing fee for this hearing application. The Landlord is provided with this Order in the above terms, and they must serve the Tenant 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: January 27, 2022

Residential Tenancy Branch