



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) to obtain an order of possession for unpaid rent or utilities, for an order of possession based on cause, for a monetary order for unpaid rent or utilities, for authorization to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee.

The landlord, the spouse of the landlord, MB (spouse), and an agent for the landlord, SM (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated September 23, 2021 (Notice of Hearing), application and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence (Package) were served on the tenant personally at the rental unit on September 24, 2021 and was witnessed by third party, MM. Based on the above, I find the tenant was duly served with the Notice of Hearing, application and documentary evidence on September 24, 2021, the date the tenant was served with the Package.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the

hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email address during the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant did not have an email address, the decision will be sent by regular mail to the tenant.

The landlord confirmed that albeit late, the tenant eventually paid the \$70.00 owing for August 2021 rent due August 1, 2021 on October 29, 2021. As a result, the landlord is no longer seeking any amount for unpaid rent; however, is seeking the filing fee and an order of possession.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on July 1, 2020. Monthly rent in the amount of \$1,050.00 is due on the first day of each month. The tenant paid a security deposit of \$525.00 at the start of the tenancy, which the landlord continues to hold.

The agent confirmed service of the 10 Day Notice by both posting to the rental unit door on August 18, 2021 and sending it via registered mail. The registered mail tracking number has been included on the style of cause for ease of reference. The 10 Day Notice included an effective vacancy date of August 29, 2021 and indicated that \$70.00 in unpaid utilities was owed. The tenants did not dispute the 10 Day Notice and did not pay the amount indicated as owing within five days of receiving the 10 Day Notice.

The landlord testified that the tenant did not pay the \$70.00 owing for August 2021 rent until October 29, 2021. The landlord confirmed that the tenant continues to occupy the rental unit and has paid money for use and occupancy for January 2021.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord and agent during the hearing, and on the balance of probabilities, I find the following.

Order of possession - I find that the tenant failed to pay the full amount of unpaid rent owing or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. I amend the due date listed on the 10 Day Notice from August 19, 2021 to August 1, 2021 as I find that is an obvious error pursuant to section 68(1) of the Act. The effective vacancy date of the Notice is listed as August 19, 2021. I find the tenant is conclusively presumed pursuant to section 46 of the Act, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice, which was August 31, 2021. The tenant continues to occupy the rental unit. Therefore, I grant the landlord an order of possession effective **January 31, 2021 at 1:00 p.m.**

As the landlord has succeeded with their application, I grant the landlord the recovery of the filing fee in the amount of **\$100.00**. Pursuant to sections 62(3) and 67 of the Act, I authorize the landlord to retain \$100.00 from the tenant's security deposit of \$525.00 and I find the tenant's security deposit is now \$425.00 effective immediately.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective January 31, 2021 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The tenancy ended August 31, 2021.

The landlord is authorized to retain \$100.00 from the security deposit for the filing fee. The balance of the security deposit is now \$425.00.

This decision and order will be emailed to the landlord. The decision will be sent by regular mail to the tenant.

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: January 20, 2022

Residential Tenancy Branch