Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Select Real Estate Property Managment
Division and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes   MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by three agents for the landlord.

This Application was originally submitted through the Direct Request process but failed to meet the requirements through that process and so was adjourned to this hearing. I note that the adjudicator from the Direct Request process wrote an Interim Decision on September 21, 2021.

In that decision the adjudicator wrote that "Notices of Reconvened Hearing are enclosed with this interim decision." I also can confirm through the Residential Tenancy Branch Dispute Management System that the tenant was emailed that Interim Decision and attached Notice of Reconvened Hearing on September 21, 2021. As such, I am satisfied the tenant has been sufficiently served with notice of this hearing and Application.

Residential Tenancy Branch Rule of Procedure 4 outlines the requirements for considering amendments to an Application for Dispute Resolution.

Rule 4.1 states that an applicant may amend a claim by completing an Amendment to an Application for Dispute Resolution form and filing the completed Amendment to an Application for Dispute Resolution form and supporting evidence with the Residential Tenancy Branch or through a Service BC Office. It goes on say an amendment may add to, alter or remove claims made in the original application.

Rule 4.2 stipulates that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord submitted, at the start of the hearing, that the amount of outstanding rent has increased from the original claim of $9,650.00 to $18,150.00. As per Rule of Procedure 4.2 I am satisfied it could reasonably be anticipated that should the tenant continue to not pay rent while waiting for this hearing to occur that the landlord would seek to amend their Application to increase the claim. As such, I allow the landlord to increase their claim to the current amount of outstanding rent of $18,150.00.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord confirmed, through testimony, the tenancy began on October 1, 2020 as a month-to-month tenancy for a monthly rent of $1,500.00 due on the 1st day of each month with a security deposit of $750.00 paid.

The landlord submitted the following relevant documents:

- A copy of a Tenant Ledger showing the tenant had failed to pay the rent in part or in full, for the months of January 2021 to December 2021 inclusive. The landlord also provided testimony the tenant had not paid any rent for the month of January 2022;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 5, 2021 with an effective vacancy date of July 15, 2021 citing the tenant had failed to pay rent in the amount of $9,650.00; and
- A copy of a Proof of Service document confirming service of the above 10 Day Notice to End Tenancy on July 5, 2021 at 4:37 p.m.by attaching a copy to the door where the person resides and that this service was witnessed by a third party.

Analysis

Section 46 allows 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. However, a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

Section 88 of the *Act* states all documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under the *Act* to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service provided for in the regulations.

Based on the landlord's undisputed testimony, I am satisfied the landlord served the tenant with the Notice to End Tenancy as allowed under Section 88 of the *Act*.

Section 90 of the *Act* allows that for a document served in this manner it is deemed to have been received by the tenant three days after it was posted. As such, I find the tenant is deemed to have received the 10 Day Notice to End Tenancy on July 8, 2021.

In addition, within 5 days after receiving a notice under Section 46, the tenant may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

The section goes on to say that if a tenant who has received a notice under this section does not pay the rent or dispute the notice, 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.

As the landlord has confirmed that the outstanding rent has not been paid in full and there is no evidence before me that the tenant applied to dispute this 10 Day Notice, I find the tenant is conclusively presumed to have accepted the end of the tenancy and she must vacate the rental unit.

Conclusion

I find the landlord is entitled to 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.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **$18,250.00** comprised of $18,150.00 rent owed and the $100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) 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: January 20, 2022

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Residential Tenancy Branch