



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 seeks an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) and a monetary order for unpaid rent pursuant to sections 26, 46, and 55 of the *Residential Tenancy Act* (“Act”). In addition, they seek recovery of the filing fee under section 72 of the Act.

It should be noted that the landlord applied for these orders by way of the direct request application process on October 7, 2021. The landlord did not provide a copy of a written tenancy agreement with their application as is required. Consequently, the arbitrator adjourned the landlord’s application to a participatory hearing. (See Interim Decision dated December 14, 2021.)

Both parties, along with interpreters for both, attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order?
3. Is the landlord entitled to recover the cost of the application filing fee?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The landlord testified as to the following: the tenancy in this dispute began in February 2018. Monthly rent is \$1,400.00 and this is due on the fifteenth day of the month. There was no security or pet damage deposit. There is also no written tenancy agreement. The rental unit is a residential home.

On September 20, 2021, the landlord served the Notice on the tenant by registered mail. A copy of the Notice was in evidence and on page two it is indicated that as of September 15, 2021, the tenant failed to pay rent, including arrears, of \$30,235.00. As of January 15, 2022, the landlord explained, the tenant owes \$25,820.00 in rent arrears.

During his testimony, I asked the landlord how the rent accumulated to such a large amount. He explained that he and the tenant have been (or were) friends for many years and for a while the unpaid rent was not considered "a big deal." And, while the tenant has paid rent a few times, at this point "it's been over two years" since rent has been paid. The landlord noted that the last large amount paid was \$9,380.00 on November 13, 2020.

The tenant agreed with the landlord's comments about them being friends and knowing each other for a few years. As for the rent, however, the tenant disputes this aspect of the landlord's claim. The tenant has a landscaping business, and he has done landscaping work for the landlord.

According to the tenant, there is no written tenancy agreement because the parties had a verbal agreement whereby the tenant could reside in the rental unit and any rent would be offset by the work the tenant did for the landlord. Submitted into evidence by the tenant were copies of invoices for work done. The invoices total \$68,082.00. (It should be noted that three invoices are dated from 2010, 2011, and 2015, before the tenancy began.) The tenant noted that the amount "owing" by the landlord exceeds whatever unpaid rent is purportedly owed.

In respect of the Notice, the tenant argued that the landlord obtained a building permit and wants to demolish the rental unit. "In the heat of the moment" the landlord issued the Notice, he explained. While the tenant does not dispute or take issue with the landlord's intention to demolish the rental unit, he simply needs more time before vacating. The tenant has purchased a house but, in that house, resides an elderly gentleman. The elderly gentleman is looking for a place on the Island but is having a difficult. (It should be noted that the tenant has issued a Two Month Notice to End the Tenancy for Landlord's Use of Property which has an effective date of April 30, 2022.)

In rebuttal, the landlord took issue with the tenant's argument regarding the invoices. He noted that one of the invoices is dated as far back as 2010, which is long before the tenancy began. More pointedly, the landlord argued that "all of these invoices are made up" and that "the work [for which the invoices represent] was never done." However, while the landlord has no issue with the tenant wanting to move out in April, what he does have an issue with is not getting paid the rent.

In his rebuttal, the tenant's interpreter briefly explained that the invoices are *not* made up and that, if necessary, they can call witnesses and submit affidavits for the work done. (No witnesses for the tenant attended the hearing, and no affidavits had been submitted before the hearing.)

Also submitted into evidence by the landlord was a direct request monetary order worksheet, registered mail receipts and tracking numbers, and copies of text message conversations between the parties.

The text messages consist primarily of the landlord making calculations of portions of the rent paid and amounts outstanding. The tenant acknowledges the texts by thanking the landlord. Nowhere in the texts does the tenant dispute the amounts calculated.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Rent must be paid when it is due under a tenancy agreement ([section 26\(1\)](#) of the Act). A landlord may issue a notice to end the tenancy under [section 46](#) of the Act if a tenant does not pay rent on time and in full.

If a tenant does not pay the amount of rent owing, or if they do not dispute the notice within 5 days, they are presumed to have accepted the notice and must vacate by the effective end of tenancy date indicated on the notice ([section 46\(5\)](#) of the Act).

A landlord may seek an order of possession and a monetary order if a tenant has not disputed the notice and the time for filing an application to dispute that notice has passed ([sections 55\(2\)\(b\) and 55\(4\)](#) of the Act).

In this dispute, the tenant neither paid the rent owing (which was \$30,235.00 on the date that the Notice was issued), nor did he dispute the Notice within five days. As such, pursuant to section 46(5) of the Act the tenant is presumed to have accepted the Notice and was required to have vacated the rental. Therefore, as the tenant did not dispute the Notice and as the time to dispute the Notice has long since passed, the landlord is entitled to an order of possession.

A copy of the order of possession is issued in conjunction with this decision, to the landlord. It is the landlord's responsibility and obligation to serve a copy of the order of possession on the tenant. Should the tenant fail to comply with the order of possession the landlord may enforce the order in the Supreme Court of British Columbia.

In respect of the rent arrears, it is worth noting that the tenant did not dispute that there is a tenancy agreement, albeit an oral agreement. Nor did he dispute that monthly rent is \$1,400.00 and that it is due on the fifteenth of the month. What he *did* dispute, however, is that he somehow owes the landlord rent arrears. It is the tenant's position that any monies that the landlord owes him for landscaping work ought to offset rent owing. Apparently, this offset arrangement was agreed to by verbal agreement. The tenant submitted several invoices that are purportedly for landscaping work done by the tenant for the landlord.

Whether there was any such offset arrangement – and I find it difficult to accept there was, given that the tenant provided no evidence of such an arrangement, including any reference to this in the multiple texts – is irrelevant. Section 26 of the Act is clear-cut:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Thus, even if the landlord owed the tenant monies for landscaping work, whether the landlord ever paid the tenant or not does not and cannot affect the legal requirement under section 26 of the Act for a tenant to pay rent in full and on time. That the landlord may have owed the tenant money for landscaping work is wholly separate and apart from the tenant's legal obligation to pay rent on time and in full, which he did not.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim for unpaid rent of \$25,820.00.

As the landlord was successful in his application, he is entitled to recover the cost of the \$100.00 application filing fee, pursuant to section 72 of the Act.

A monetary order in the amount of \$25,920.00 is issued in conjunction with this decision, to the landlord. The landlord must serve a copy of the monetary on the tenant. Should the tenant fail to comply with the monetary order then the landlord may file and enforce the monetary order in the Provincial Court of British Columbia.

Conclusion

The landlord's application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 27, 2022

Residential Tenancy Branch