



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, MNU-DR, FFL

Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on November 2, 2021 seeking an order of possession for the rental unit, and to recover the money for unpaid utilities.

This participatory hearing was convened after the issuance of a December 17, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the Landlord’s paper application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the Landlord. The Adjudicator reconvened the landlord’s application for the following to a participatory hearing as the adjudicator who initially considered the application was not satisfied with information on the rental unit address.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 24, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Preliminary Matter

The Landlord attended the hearing; the Tenant did not. The Landlord provided that they delivered notice of this dispute resolution hearing via registered mail to the Tenant. They provided a record of their registered mail purchase on December 20, 2021, and the tracking number. The Landlord provided that their belief was the Tenant still resided at the rental unit at that time – this was based on their knowledge that the Tenant kept personal items (i.e., “valuables”) in the rental unit.

The LL noted this registered mail was returned. The tracking record from the registered mail shows the package returned to the Landlord on January 11, 2022. I accept the Landlord's submission that the Tenant refused the registered mail package; I find they avoided service.

Based on the submissions of the landlord, I accept they served the tenant notice of this hearing and their Application in a manner complying with s. 89(2)(b) of the *Act*, and the hearing proceeded in the tenant's absence. Pursuant to s. 90 of the *Act*, I find the Tenant is deemed to have received the hearing package on December 25, 2021.

Issues to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent/utilities pursuant to s. 46 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid utilities 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

The Landlord provided a copy of the tenancy agreement in their evidence. The tenancy began on December 15, 2016 on a month-to-month basis. The initial rent amount was \$730, and this did not change over the length of the tenancy. The agreement is clear that utilities are not included in the rent amount. The agreement shows the Tenant paid a security deposit amount of \$365 at the start of the tenancy.

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 to the Tenant on October 11, 2021.

The Landlord also provided a document entitled Proof of Service. This sets out that the Landlord attached the 10-Day Notice to the door of the rental unit on October 11, 2021 at 5:15pm. They provided an image of this mode of service in their evidence. A witness

signed the document to attest to the fact that they observed the Landlord serve this document “to the door or other conspicuous place as described”

The 10-Day Notice states 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, October 23, 2021.

The reason for the landlord serving the 10 Day Notice is the unpaid rent for October 2021 in the amount of \$730. The Landlord applied for a money order including this amount.

The Landlord also listed unpaid utilities for \$74.85. The Landlord provided a copy of their notice to the Tenant dated October 11, 2021 advising of this outstanding amount. The Landlord provided copies of the utilities invoices showing this and spoke to this in the hearing to advise that the Tenant covers 40% of utility amounts. The Landlord would each month receive the invoices and advise the Tenant of the specific amount owing. The Tenant would then make a payment to the Landlord, combined with their monthly rent, via etransfer. The Landlord stated clearly in the hearing that they were the sole source of information to the Tenant about utility amounts owing.

Combining the utilities amount and the October rent unpaid, the Landlord’s Application is for the total amount owing of \$804.85.

Analysis

From the testimony of the Landlord, I am satisfied that a tenancy agreement was in place. The agent provided the specific term of rental payment and amount.

By s.90(c), the deemed service date is October 14, 2021, three days after the Landlord attached the document to the door of the rental unit. I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by October 19, 2021, within the five days granted under s. 46(4) of the *Act*. The tenant did not dispute the 10-Day Notice within that 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, October 23, 2021.

The landlord provided testimony on the account in question and the accumulation of the amount. As presented, I find the amount of \$804.85 is accurate. The utility amounts applied for are 40% of the invoice evidence they presented.

I find the landlord is entitled to an Order of Possession as well as an award for the unpaid rent amount of \$804.85. As the landlord is successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

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 sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$904.85 for rent owed for October 2021, outstanding utilities amounts, and a 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: February 24, 2022

Residential Tenancy Branch