



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on August 26, 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 issuance of the October 13, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the Landlord’s 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 to a participatory hearing as they were not satisfied with details in the Landlord’s Application concerning parties to the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 15, 2022. In the conference call hearing I explained the process and provided both the Landlord’s agent (hereinafter the “Landlord”) and the single Tenant the opportunity to ask questions. The Tenant confirmed they received the notice of this hearing, and this included the Landlord’s prepared documentary evidence. The Tenant did not provide documentary evidence. On this basis I proceeded with the hearing as scheduled.

Issues to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55(1) of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 55(4)(b) 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 presented a copy of the tenancy agreement. This shows the start of the tenancy at this rental unit was on December 1, 2020, set for a fixed term to expire in December 2021. That initial agreement was with a prior Landlord; this current Landlord took ownership in June 2021. In their evidence the Landlord provided other documents to validate the claim that the Landlord is the owner of the rental unit and has been the Landlord since their purchase.

The amount of rent is set at \$1,750 per month, payable on the first of each month. The Tenant paid a security deposit of \$875, and a pet damage deposit of \$200. In the hearing the Tenant added that in October 2021 the other Tenant moved out, and there is now another Tenant living there.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"), issued on August 4, 2021. This document gave the move-out date of August 14, 2021. There was no method of service indicated on page 2 of the document. The reason for ending the tenancy was the Tenant not paying the rent amount of \$1,750 that was due on August 1, 2021.

The Landlord provided a second document related to this, a Proof of Service. This indicates on page 1 that the Landlord served the document "In person". On page 2, a witness signed to state they observed the Landlord serve the 10-Day Notice to "the tenant or an adult who apparently lives with the tenant as described in the special details". Those details were provided on the document as follows: "Hand delivered to residence. . . accepted by BD who answered the door but was unable to locate the tenants and who seemed to be a resident/occupant of the property. . . over 19 who agreed to ensure that the tenants . . . received the paper work presented which included the 10 day notice to end tenancy . . ."

In the hearing, the Landlord described their direct observation of this person BD who answered the door, coming up from the basement to do so. The Landlord asked for the Tenants, and BD said the Tenants were in the house and not answering. After service, the Landlord-owner contacted the Tenants by telephone to ask if it was received and the Tenants confirmed that it was.

In the hearing the Tenant stated they did not receive the 10-Day Notice at that time. They thought the individual named "BD" was a friend of the other Tenant and claimed to not know

who that person was. The other Tenant did not mention this to the Tenant who attended the hearing; had they been aware, they would have disputed the 10-Day Notice within the timeline given on that document.

The Landlord provided other documents showing their written warnings to the Tenant of late rent payment. This occurred on August 4, 2021, and the written indication on that document is that rent was paid late in July 2021. A second document indicates this was the second such caution notice, setting out the possibility of ending the tenancy for repeated late payments of rent.

The Landlord made their original Direct Request Application on August 26, 2021. At that time, the Tenant was owing for that August 2021 amount of rent. Subsequent to this, the Tenant did not pay rent for September, October, and December 2021. The Tenant paid rent for November 2021, albeit late, for which the Landlord issued a receipt, provided in their evidence. Additionally, the Tenant did not pay rent for January or February 2022.

On reviewing this with the Tenant present in the hearing, they stated they provided partial payments for the months of December 2021 and February 2022. This was based on some arrangement for replacement appliances. The Tenant acknowledged they produced no record of this as evidence for this hearing. Counter to this, the Landlord in the hearing provided they contacted the owner days before the hearing and confirmed there was only rent paid for the month of November 2021.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the Landlord's testimony in the hearing and the proof of current ownership, I am satisfied that a tenancy agreement between the Landlord and the Tenant existed. I find the rent agreement was in place and clearly stated the amount and 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, the 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.

I have reviewed the evidence and the parties' testimony. I find it more likely than not that the Landlord ensured service of the 10-Day Notice to an individual they believed resided with the Tenant at that time. This is based on the nature of the rental unit being a stand-alone house on a separate property. On a balance of probabilities, I find it more likely than not that the individual BD who received the document resided at the rental unit. Part of this assessment relies on the credibility of the Landlord versus that of the Tenant, who had difficulty recalling key events during the tenancy, could not provide an accurate account of rent paid, and relied on their text message log on their own phone during the hearing, not provided records as evidence to give their statements a foundation. Additionally, in the hearing, the Tenant stated when asked directly on receipt of the 10-Day Notice: "I might have received that . . . I must have. . . I think I replied to that."

The Tenant then failed to pay rent owing by August 9, 2021, within the five days after the service date of August 4, 2021. There is no evidence before me that the Tenant disputed the 10-Day Notice within the five-day specified period.

Based on the foregoing, I find 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, August 14, 2021. In line with this, I grant the Landlord an Order of Possession. I have reviewed the 10-Day Notice and find it conforms with the s. 52 requirements for form and content.

The Tenant did not provide records of payment of rent or any other matter for which the Landlord may have granted a relief on the full rent amount. For this reason, I find that the Tenant is obligated to pay rent amounts owing. This is \$10,500 through to the date of the hearing. The *Act* s.55(4) prescribes rent amounts owing in these circumstances.

The *Act* s. 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of \$10,500. After setting off the security deposit (\$875) and the pet damage deposit (\$200), there is a balance of \$9,425. I am authorizing the landlord to keep the security deposit and pet damage deposit amounts and award the balance of \$9,425 as compensation for the August 2021 to February 2022 rent amounts.

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

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 55(4) and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$9,525, 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 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 15, 2022

Residential Tenancy Branch