



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

This matter was initiated by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act (Act)*. The Landlord applied for an Order of Possession for unpaid rent, a monetary Order for unpaid rent, and to recover the filing fee paid for the Application.

On August 20, 2021 a Residential Tenancy Branch Adjudicator concluded that the Landlord's Application for Dispute Resolution should be considered at a participatory hearing.

A participatory hearing was convened on December 09, 2021 to consider the Landlord's application for an Order of Possession for Unpaid Rent, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

That hearing was adjourned for reasons outlined in my interim decision of December 09, 2021. The hearing was reconvened on April 04, 2022 and was concluded on that date.

As outlined in my interim decision of December 09, 2021, I am satisfied that the Tenant received the Notice of Dispute Resolution Proceeding by October 14, 2021 and that it is reasonable to consider the Landlord's Application for Dispute Resolution. I find that the hearing adjournment has given the Tenant ample time to consider the claims being made by the Landlord.

In my interim decision of December 09, 2021, I gave the Landlord authority to re-serve all of the evidence the Landlord served to the Tenant on August 23, 2021 by sending it, via registered mail, to the mailing address provided to the Tenant at the hearing. At the hearing on April 04, 2022, Legal Counsel for the Landlord stated that all of the evidence submitted to the Residential Tenancy Branch on August 23, 2021 was served to the mailing address provided by the Tenant, via registered mail, on December 14, 2021.

At the hearing on April 04, 2022, Legal Counsel for the Landlord cited a Canada Post tracking number that corroborates her submission regarding service. Legal Counsel for the Landlord stated that the Canada Post website shows this package was delivered on December 17, 2021. She stated this evidence package has not been returned to the sender.

At the hearing on April 04, 2022, the Tenant stated that she did not receive the evidence the Landlord submits was sent on December 14, 2021.

On the basis of the information provided by the Landlord, I find that on December 14, 2021, the Landlord sent an evidence package to the mailing address provided by the Tenant.

I find, on the balance of probabilities, that the Tenant received the hearing package that was mailed on December 14, 2021. I find her testimony that she did not receive this package was directly refuted by the Canada Post website. During the hearing I searched the Canada Post website and determined the package associated to the tracking number provided by Legal Counsel for the Landlord was delivered on December 17, 2021. As the service address for the Tenant is a post office box, I can find no logical reason to conclude that she did not receive the package that was delivered there.

In concluding that the Tenant received the package that was mailed on December 14, 2021 I was also influenced by the Landlord's submission that the package was not returned to the sender.

I find the Tenant's testimony that she did not receive this evidence package to be self-serving, as there is evidence in that package that strongly supports submissions made by the Landlord.

As I am satisfied that the Tenant received the Landlord's evidence package that was sent on December 14, 2021, that evidence was accepted as evidence for these proceedings.

In my interim decision of December 09, 2021, I gave the Tenant authority to serve the Landlord with any evidence previously submitted to the Residential Tenancy Branch for these proceedings and/or new evidence in response to any of the evidence served to her by the Landlord prior to December 03, 2021, via email.

On January 07, 2022 the Tenant submitted evidence to the Residential Tenancy Branch. At the hearing on April 04, 2022, the Tenant stated that on December 21, 2022 this evidence was served to the Legal Counsel for the Landlord's email address. Legal Counsel for the Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

At the hearing on December 09, 2021 and in my interim decision of that date, the parties were advised that the Application for Dispute Resolution is amended to include an application for an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was posted on the door of the rental unit on August 23, 2021.

At the hearing on December 09, 2021 and in my interim decision of that date, the parties were advised that the Application for Dispute Resolution is amended to include an application for all rent that is currently due.

As the hearing commenced on December 09, 2021, neither party was permitted to submit additional evidence except for evidence that was explicitly permitted by my interim decision of December 09, 2021. Both parties submitted evidence to the Residential Tenancy Branch in March of 2022. My interim decision did not permit either party to submit evidence in March of 2022 and, as such, none of that evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant, with the exception of legal counsel, affirmed they would not record any portion of these proceedings.

Preliminary Matter

At the hearing on April 04, 2022, Legal Counsel for the Landlord stated that the rental unit was vacated on February 23, 2022. She stated that the Landlord no longer requires an Order of Possession, given that the rental unit has been vacated.

The Tenant agrees the rental unit was vacated on February 23, 2022.

As the rental unit has been vacated and the Landlord no longer requires an Order of Possession, the Landlord's application for an Order of Possession will not be considered at these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for any rent that is currently unpaid?

Background and Evidence

The Landlord and the Tenant agree that:

- This tenancy began on November 01, 2019;
- At the start of the tenancy the Tenant agreed to pay rent of \$1,500.00;
- Shortly after the tenancy began, rent was reduced to \$1,400.00; and
- Rent is due by the first day of each month

Legal Counsel for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 05, 2021, was posted on the door of the rental unit on July 05, 2021. This Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declared that the rental unit must be vacated by May 15, 2021. She stated that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was inadvertently dated May 05, 2021 and that it should have been dated July 05, 2021.

The Tenant stated that she did not receive this Notice until she received evidence that was left at her door in November of 2021.

Legal Counsel for the Landlord stated that a second Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was posted at the door of the rental unit on August 23, 2021, which declared that the rental unit must be vacated by September 02, 2021. The Tenant stated that she did not receive this Notice until she received the evidence that was left at her door in November of 2021.

The Landlord stated that rent for July was not paid until August 14, 2021. The Tenant stated that \$1,400.00 was paid on July 01, 2021.

The Landlord stated that no rent was paid for August of 2021.

The Tenant stated that she paid her rent for August of 2021 with a bank draft dated July 28, 2021, in the amount of \$1,400.00. She stated that she sent this bank draft to the Landlord, via registered mail, although she lost her Canada Post receipt. She stated that she thinks the bank draft was sent on July 28, 2021 and she does not know if it was cashed.

Legal Counsel for the Landlord stated that the Landlord did not receive registered mail that was sent by the Tenant on, or about July 28, 2021. She stated that the Landlord has not seen the bank draft, although the Landlord has seen the receipt for the bank draft submitted in evidence by the Tenant.

The Landlord and the Tenant agree that rent was paid for September and October of 2021.

The Tenant stated that she paid her rent for November of 2021 with a bank draft, dated October 27, 2021, in the amount of \$1,400.00. The Tenant stated that this bank draft was sent to the Landlord, via registered mail, on October 30, 2021. The Tenant cited a Canada Post tracking number for the package that was mailed on October 30, 2021. The Tenant stated that she does not know if this bank draft was cashed.

The Landlord acknowledges receiving registered mail from the Tenant that was mailed on October 30, 2021. The Landlord submits that this package contained documents but it did not contain a bank draft for rent for November of 2021. She stated that the Landlord has never received payment for rent for November of 2021.

The Tenant stated that she paid her rent for December of 2021 with a bank draft, also dated October 27, 2021, in the amount of \$1,400.00. The Tenant stated that this bank

draft was sent to the Landlord, via registered mail, on December 01, 2021. The Tenant cited a Canada Post tracking number for the package that was mailed on December 01, 2021, the last four numbers of which are 0432. The Tenant stated that she contacted her bank and confirmed that this bank draft has been cashed, although she does not know when it was cashed.

Legal Counsel for the Landlord stated that the bank draft for rent for December was not mailed to the Landlord. She stated that on December 06, 2021 the Landlord received a registered letter from the Tenant, which was empty. The Landlord submitted video evidence of the Landlord opening registered mail, which is empty.

Legal Counsel for the Landlord stated that the bank draft for rent for December of 2021 was located in the rental unit on February 25, 2022 when the Landlord was cleaning the unit after it had been vacated. She stated that the Landlord cashed the bank draft after it was located in February of 2022.

The Landlord and the Tenant agree that rent has been paid for January and February of 2022.

The Landlord submits that the Landlord with the initials "SN" went to the Tenant's financial institution on February 10, 2022 and spoke with the manager. The Landlord submits that the bank manager traced the numbers on the receipts for the aforementioned three banks drafts and determined that as of February 10, 2022, they had not been cashed. Legal Counsel notes that the bank draft that ends with the numbers 6308 was cashed after this information was provided to the Landlord.

On several occasions during these proceedings, the Tenant repeated that all of her rent has been paid in full.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* requires tenants to pay rent when it is due. On the basis of the undisputed evidence, I find that the Tenant and the Landlord agreed that rent of \$1,400.00 would be paid by the first day of each month.

On the basis of a bank draft submitted in evidence, I find that the Tenant obtained a bank draft, dated October 28, 2021, in the amount of \$1,400.00. The last four numbers

number of this bank draft are 6308. On the basis of hand-written notes on the bank draft, I find that this bank draft was to be payment for December of 2021.

On the basis of the undisputed evidence, I find that the Tenant sent registered mail to the Landlord on December 01, 2021 and that the last four numbers of the Canada Post tracking number for this package are 0432. The Landlord acknowledges receiving this package.

I find that the Tenant has submitted insufficient evidence to support her testimony that she mailed the bank draft that ends with the numbers 6308 to the Landlord, via registered mail, on December 01, 2021. I favour the Landlord's submission that the envelope mailed on December 01, 2021 was empty over the Tenant's testimony that the bank draft was sent in the envelope. I favour the Landlord's submission in this regard, in large part, because it is corroborated by video evidence that shows the Landlord opening an empty envelope that was sent by registered mail. Conversely, the Tenant has submitted no evidence to corroborate her testimony that the bank draft was in the envelope.

On the basis of the undisputed evidence, I find that the bank draft that ends with the numbers 6308 has now been cashed. On the basis of the submission of the Landlord and in the absence of any evidence from the Tenant that refutes the submission, I find that the bank draft was cashed in February of 2022. The finding that this bank draft was cashed in February of 2022, in my view, corroborates the Landlord's submission that this bank draft was found in the rental unit on February 25, 2022 after the rental unit had been vacated.

The finding that this bank draft was cashed in February of 2022, in my view, does not support the Tenant's submission that the bank draft was mailed to the Landlord on December 01, 2021. Although it is possible that a landlord would delay cashing a rent payment, it is not a common occurrence. Typically, landlords are motivated to collect money that is due to them in a timely manner.

At the hearing on April 04, 2022, I was advised that a Residential Tenancy Branch decision was rendered after the proceedings commenced on December 09, 2022. To ensure res judicate does not apply, I viewed that decision. The number of that Residential Tenancy Branch file appears on the front of this decision.

In the previous Residential Tenancy Branch decision, dated February 02, 202, the Landlord was granted a monetary Order of \$1,400.00 in compensation for unpaid rent from December of 2021.

As the Landlord has been granted compensation for unpaid rent for December of 2021, I find that the \$1,400.00 paid to the Landlord with the bank draft that ends with the numbers 6308, I find that this payment should be applied to previous arrears.

On the basis of a second bank draft submitted in evidence, I find that the Tenant obtained a second bank draft, dated October 28, 2021, in the amount of \$1,400.00. The last four numbers number of this bank draft are 6307. On the basis of hand-written notes on the bank draft, I find that this bank draft was to be payment for November of 2021.

On the basis of the undisputed evidence, I find that the Tenant sent registered mail to the Landlord on October 30, 2021 and that the last four numbers of the Canada Post tracking number for this package are 6213. The Landlord acknowledges receiving this package.

I find that the Tenant has submitted insufficient evidence to support her testimony that she mailed the bank draft that ends with the numbers 6307 to the Landlord, via registered mail, on October 30, 2021. I favour the Landlord's submission that the package mailed on October 30, 2021 did not contain a bank draft over the Tenant's testimony that the bank draft ending with the numbers 6307 was sent in the package. I favour the Landlord's submission, in part, because the Tenant's conduct in regard to the envelope sent on December 01, 2021 seriously undermines her credibility.

I favour the Landlord's submission that the bank draft ending with the numbers 6307 was not received, in part, because the evidence before me is that draft has not yet been cashed. I find that this supports the Landlord's submission, as I find it highly unlikely the Landlord would not have cashed the bank draft if it had been received.

As the Tenant has submitted insufficient evidence to establish that she provided the Landlord with the bank draft ending with the numbers 6307, I find that she still owes rent for November of 2021. I find that the \$1,400.00 paid to the Landlord with the bank draft that ends with the numbers 6308, should be applied to rent due for November of 2021, which means that rent has been paid in full for November.

On the basis of a third bank draft submitted in evidence, I find that the Tenant obtained a bank draft, dated July 28, 2021, in the amount of \$1,400.00. On the basis of handwritten notes on the bank draft, I find that this bank draft was to be payment for August of 2021.

I find that the Tenant has submitted insufficient evidence to support her testimony that she mailed the July 28, 2021 bank draft to the Landlord, via registered mail. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates this submission, such as a Canada Post tracking number or receipt or that refutes the Landlord's submission that it was not received.

I favour the Landlord's submission that the July 28, 2021 bank draft was not received, in part, because the evidence before me is that draft has not yet been cashed. I find that this supports the Landlord's submission, as I find it highly unlikely the Landlord would not have cashed the bank draft if it had been received.

As the Tenant has submitted insufficient evidence to establish that she provided the July 28, 2021 bank draft to the Landlord, I find that she still owes rent for August of 2021.

I find that the Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim of \$1,500.00, which includes \$1,400.00 in rent for August of 2021 and \$100.00 for the cost of filing this Application for Dispute Resolution.

I grant the Landlord a monetary Order for \$1,500.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

In the event the Landlord does not wish to enforce the monetary Order through the Province of British Columbia Small Claims Court, the Landlord has the right to retain this amount from any security or pet damage deposit paid by the Tenant, pursuant to section 72(2) of the *Act*.

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: April 05, 2022

Residential Tenancy Branch