



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 January 17, 2022 seeking an order of possession for the rental unit, to recover the money for unpaid rent and utilities, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on June 24, 2022.

The Landlord and one of the Tenants named in the tenancy agreement (the “Tenant”) attended the hearing as scheduled. The Tenant confirmed they received notice of this hearing and the documents prepared by the Landlord as evidence.

At the outset, I provided an explanation of the hearing process and gave each party in attendance the opportunity to ask questions on the hearing process.

Preliminary Matter – notification of hearing to the Tenants

The Landlord stated that they delivered notice of this dispute resolution to the two Tenants who did not attend. They did so via registered mail on March 17, 2022 after attempting to deliver the documents in person to each Tenant. Those Tenants did not accept personal service.

The Landlord provided tracking information for each piece sent to the Tenants on March 17, 2022. From what the Landlord presents here on notifying all Tenants of this hearing, I am satisfied they served each Tenant the notice of this hearing in a method prescribed by s. 89(2)(b) the *Act*. I consider the document received by the tenant on March 22, 2022, as per s. 90(a) of the *Act*.

Preliminary Matter – Tenants named in the tenancy agreement

The Tenant who attended the hearing signed the tenancy agreement with the other Tenants and the Landlord on May 28, 2020. In the hearing they raised their concerns with their position in the matter because they did not live in the rental unit with the Tenants. They made it clear to the Landlord in January 2022 that they would not be paying rent or utilities on an ongoing basis when the Tenants who do live in the unit did not pay.

As provided for in the *Residential Tenancy Branch Policy Guideline 13* – that which gives a statement of the policy intent of the *Act* – co-tenants are jointly and severally responsible for meeting a tenancy agreement's terms. Thus stated, the Tenant who attended the hearing and the Tenants who did not are jointly and severally liable for debts related to this tenancy.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent and/or utilities pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent and/or 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 spoke to the terms of the tenancy agreement, a copy of which appeared in their evidence. The tenancy began on June 1, 2020, with the rent amount of \$1,300 payable on the first of each month. The landlord and the tenant signed the agreement on May 28, 2020.

The Landlord applied for an Order of Possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10-Day Notice"). They presented that they

served this document to the Tenants at the rental unit on January 10, 2022. This is depicted in a photo showing the Landlord doing that. A witness signed a Proof of Service document to attest to the fact that they observed the Landlord serve this document by “Attaching a copy to the door . . .”

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, January 21, 2022.

The reason for the landlord serving the 10 Day Notice is accumulated unpaid rent, this was for \$1,300 due on January 1, 2022. The Landlord also added unpaid utilities to the 10-Day Notice, in the amount of \$267.81, due on December 5, 2021.

In their February 9, 2022 Application, the Landlord also applied for a monetary order for \$1,567.81, the amount of rent and utilities.

In the hearing, the Landlord provided that after issuing the 10-Day Notice on January 10, 2022, they received \$650 in a rent payment on February 2.

In the hearing, the Landlord updated their monetary claim to account for subsequent months of rent. The tenant paid no other rent aside from the February \$650. Rent was unpaid in February, March, April, May and June.

Analysis

From the testimony of the Landlord, I am satisfied that a tenancy agreement was in place. They provided the specific terms of rental payment and amount. This is the basic amount of rent at \$1,300 per month.

I accept the undisputed evidence before me that the Tenant failed to pay the rent owed in full by January 18, 2022, 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, January 21, 2022.

The Landlord provided testimony on the account in question and the accumulation of the amount. I find the amount in question, owing from the Tenant, is \$7,150. By Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*, I accept the Landlord's amendment to their Application.

The Landlord did not provide a record of the utility amount owing in the form of an invoice. There was no receipt or other evidence of payment provided. I reduce their claimed amount for this reason: there is no proof of the account owing. Though they provided a further amount for utilities owing from the Tenant in the hearing, for \$567, they did not provide evidence of that to amend their claim.

The hearing itself was scheduled on June 24, 2022, and the Landlord stated that the Tenants were still living in the rental unit on that date. The Tenant has been overholding since the effective date of the end of tenancy, January 21, 2022.

I find the landlord is entitled to an Order of Possession as well as an award for the unpaid rent amount of \$7,150. As the Landlord is successful in this application, I find that the Landlord is entitled to recover the \$100 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, the landlord may file this Order in the Supreme Court of British Columbia, where it may be enforced as an Order of that court.

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$7,250 for rent owed for January through to June 2022 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: June 24, 2022

Residential Tenancy Branch