



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 hearing was scheduled to convene at 11:00 a.m. on June 3, 2022 concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The landlord's application was made by way of the Direct Request process, which was referred to this participatory hearing.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Notice of Dispute Resolution Proceeding and all evidence by registered mail on May 6, 2022 at the address of the rental unit, and has provided a copy of a receipt bearing that date as well as a Registered Domestic Customer Receipt with a tracking number assigned by Canada Post. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this fixed-term tenancy began on October 26, 2020 which expired on October 31, 2021. A copy of the tenancy agreement has been provided for this hearing which states that at the end of the fixed term, the tenant is required to vacate the rental unit, for occupation by the landlord's son. However, the landlord's son is not moving into the rental unit and the tenancy continued on a month-to-month basis, and the tenant still resides in the rental unit.

Rent in the amount of \$2,100.00 is payable on the 1st day of each month. The tenancy agreement does not specify the day rent is payable, however the landlord has provided text messages and emails which indicate that the tenant understood that rent is due on the 1st day of each month.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,050.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a high-rise apartment building, and the landlord does not reside on the property.

The tenant is currently in arrears of rent the sum of \$2,800.00.

On March 4, 2022 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) by posting it to the door with a witness present, and a Proof of Service document has been provided for this hearing setting out that testimony. A copy of the Notice has also been provided for this hearing which is dated March 4, 2022 and contains an effective date of vacancy of March 17, 2022. The reason for issuing it states that the tenant failed to pay rent in the amount of \$3,200.00 that was due on March 1, 2022. The tenant has not served the landlord with a Notice of Dispute Resolution Proceeding disputing the Notice, and the landlord seeks an Order of Possession.

The landlord provided a Direct Request Worksheet indicating that as of March 1, 2022 the tenant was in arrears the sum of \$3,200.00. It also shows that on January 13, 2022 the tenant paid \$1,000.00, leaving \$1,100.00 outstanding. On February 14, 2022 the tenant paid \$2,000.00, leaving another \$100.00 outstanding.

Since the Direct Request Worksheet was completed, the landlord testified that on March 16, 2022 the tenant paid \$2,100.00. On April 8, 2022 the tenant paid \$1,000.00 and another \$1,000.00 on April 28, leaving another \$100.00 outstanding for April. On May

4, 2022 the tenant paid \$1,000.00, leaving another \$1,100.00 outstanding. On June 2, 2022 the tenant paid \$1,700.00, leaving another \$400.00 outstanding.

Analysis

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. Where a tenant is served with the Notice, the tenant has 5 days to pay the rent in full or dispute the Notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy.

I accept the undisputed testimony of the landlord that the tenant did not pay the rent in full within 5 days. I also accept the undisputed testimony of the landlord that the tenant has not served the landlord with documentation disputing the Notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I also accept that the tenant has made installments toward rent, but is still in arrears the sum of \$2,800.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$2,900.00. The landlord must serve the order on the tenant, and may file the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,900.00.

This order is final and binding and may be enforced.

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: June 03, 2022

Residential Tenancy Branch