



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pacific Quorum Okanagan Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-DR, OPR-DR, MNRL, MNDCL, FFL

Introduction

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on February 18, 2022 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.

The Landlord amended their Application on June 9 and again on June 21 to update the monetary component of their claim.

This participatory hearing was convened after the issuance of a March 29, 2022 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 application to a participatory hearing as they were not satisfied with basic details in the Landlord’s Application concerning the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 14, 2022. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

Preliminary Matter – hearing notice to the Tenant

The agent of the Landlord (hereinafter the “Landlord”) gave the Tenant notice of this dispute resolution hearing by registered mail. The Landlord provided tracking information and described that the notice of this hearing and their amendments went directly to the rental unit. This included their prepared documentary evidence.

I find the Tenant had proper notice of this participatory hearing, as per s. 89(1)(c) of the *Act*; however, they did not attend.

Issue(s) to be Decided

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

Is the Landlord entitled to monetary compensation for unpaid rent 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 submitted a signed copy of the Residential Tenancy Agreement. This shows the start of tenancy date was May 1, 2017. The rent was \$1,250 at the outset of the tenancy. This increased to \$1,268.75 as shown in the Landlord's evidence with the Notice of Rent Increase dated October 25, 2021. A security deposit amount of \$625 was paid on April 29, 2017.

The Landlord applied for an order of possession pursuant to the 10-Day Notice issued to the Tenant on February 4, 2022. This was for the then-unpaid rent amount -- \$1,268.75 --- that was due on February 1, 2022. The Landlord served this to the Tenant by attaching it to the door of the rental unit, for which they provided a Proof of Service document to show this was on February 4, at 3:35 p.m.

The Landlord also applied for an amended monetary order for \$3,806.25. This is shown in the Landlord's two Application amendments for the months of May and June. In the hearing, the Landlord testified under affirmed oath that they did not receive rent for the month of July 2022.

The Landlord also provided that the Tenant paid the February rent in full by February 23. The Tenant paid each of March and April 2022 in full.

The Tenant did not attend the hearing and provided no documentary evidence in this matter. The Tenant provided documents to the Residential Tenancy Branch concerning this matter on July 7, 2022. The Landlord in the hearing stated they did not receive this evidence from the Tenant.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the Landlord's oral testimony on its' terms and the conditions of how it was started with the Tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the Landlord, and the proof of an agreement between the parties, 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, a 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), that 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.

Based on the undisputed submissions by the Landlord here, I find they provided the 10-Day Notice attached to the door of the rental unit. The Tenant failed to pay the rent owing by February 12, within the five days after the deemed service date of February 7 as per s. 90(c) of the *Act*. There is no evidence before me that the tenant disputed the 10 Day Notice within the 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, February 17, 2022. In line with this, I grant the Landlord an Order of Possession.

The evidence of the Landlord on the monetary claim is not disputed.

I find that the tenant is obligated to pay \$3,806.25, as per the tenancy agreement and the rent increase effective February 1, 2022. The Landlord provided two amendments to their initial Application as required, and concerning the July 2022 rent, I granted an amendment at the hearing as per Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure*.

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 \$3,806.25. After setting off the security deposit, there is a balance of \$3,181.25. I am authorizing the landlord to keep the security deposit amount and award the balance of \$3,181.25 as compensation for the May to July 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 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,281.25, for rent amounts owing, 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: July 14, 2022

Residential Tenancy Branch