



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

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on March 24, 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.

This participatory hearing was convened after the issuance of a April 26, 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’s application to a participatory hearing as they were not satisfied with details in the Landlord’s application concerning past rent increases.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 17, 2022. In the conference call hearing I explained the process and provided the attending party, the Landlord, the opportunity to ask questions.

Preliminary Matter – Landlord’s service of Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Notice of Dispute Resolution Proceeding for this hearing. This means the Landlord must provide proof that they served that document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Landlord set out how they served this Notice to the Tenant using registered mail, sent on April 28, 2022, two days after they received the previous Adjudicator’s decision. The Tenant refused to accept this registered mail and Canada Post returned the item to the Landlord.

Following this, the Landlord provided the document to the Tenant in person “in early May.” The Landlord presented in the hearing that the original registered mail package contained all of their prepared evidence for this hearing.

Based on the submissions of the Landlord, as well as the evidence of their registered mail in the form of the receipt and mailing label, I find they served the Notice of Dispute Resolution Proceeding in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Tenant’s absence. I find the Tenant had proper notification of this participatory hearing, and more likely than not chose not to 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 April 1, 2016. The rent was \$1,300 per month payable on the first of each month. The Tenant paid a security deposit amount of \$650 on February 20, 2016.

A single page Addendum is attached to the agreement, signed jointly by the parties on February 20, 2016. This notes “Tenant needs to keep the suite clean. Landlord is pleased to give \$50~100 monthly cashback as long as the suite is clean and well maintained.”

The Landlord provided documentation on rent increases over the course of the tenancy as follows:

- a Notice of Rent Increase signed by the Landlord on May 15, 2017 for a rent increase to \$1,350 starting on September 1, 2017 – the Landlord noted “\$100 rebate will be applied if the place is well maintained. \$1250 will be paid monthly with rebate.”
- a Notice of Rent Increase signed by the Landlord on June 20, 2018 for a rent increase to \$1,400 starting on October 1, 2018 – the Landlord noted “As long as the rental place is well maintained, \$100 monthly rebate is effective and monthly payment is \$1300”

- a Notice of Rent Increase signed by the Landlord on August 12, 2019 for a rent increase to \$1,435 starting on December 1, 2018 – the Landlord noted “\$100 landlord rebate, see details in original rental contract. \$1335 total after rebate.”
- a Notice of Rent Increase signed by the Landlord on December 1, 2021 for a rent increase to \$1,456 starting on February 1, 2022 – the Landlord noted “As long as the place is well maintained, \$86 monthly rebate is effective and monthly payment is \$1370”

For each Notice of Rent Increase, the Landlord showed the Tenant’s acknowledgement on page 2 where they signed beside the indication of the current rent amount. To the Landlord, this shows the Tenant was aware of the rent amount. For this current year, the Tenant was aware of the \$1,370 rent amount since February 1st, as indicated by their signature on the 2021-2022 Notice of Rent Increase document.

Additionally, the Landlord and Tenant signed a document entitled “Rental Adjustment Notice” on March 1, 2022, this clarifies that “New rent will be effected at Feb 1st, 2022. Expected rent payment will be \$1370 (with \$100 rebate).” The Landlord presented that the February 1, 2022 rent payment was delayed, so they signed this separate document with the Tenant to ensure the correct rent amount was known to the Tenant. The Landlord also submitted phone call records in which the Tenant made a promise to pay both February and March rent amounts on March 1st, the making the same promise a few days later on March 5. There was also a signed note with this promise. Finally, the Tenant promised payment on March 9, and when they failed at this, the Landlord issued a 10-Day Notice for Unpaid Rent (the “10-Day Notice”) on March 7, 2022.

This 10-Day Notice provided the date of March 17, 2022 as the end of tenancy. The Landlord served this to the Tenant in person on March 7, 2022. The Landlord provided phone call recordings setting out the Tenant’s acknowledgement that they received this. The Landlord also provided a “Proof of Service” document setting out their service to the Tenant at 7:00pm on that date, witnessed by the Landlord’s partner.

After this, and despite their promise to pay by March 9, the Tenant did not pay by March 19th. The Landlord set out the following schedule for subsequent payments by the Tenant:

- March 2022 rent for \$1,370: Tenant did pay on April 2
- April 2022 rent for \$1,370: Tenant did pay on April 14
- May 2022 rent for \$1,370: Tenant paid on time on May 1
- June 2022 rent for \$1,370: Tenant paid on June 10 – Landlord issued a separate 10-Day Notice
- July 2022 rent for \$1,370: Tenant paid on July 8

- August 2022 rent for \$1,370: Tenant paid on August 5.

In the hearing, the Landlord confirmed the Tenant was fully paid as of the hearing date. This submission and testimony overrides the Landlord's Direct Request Worksheet they provided as part of their original Application in this matter.

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. Most importantly I find the Tenant was aware of the current rent amount at all times, as indicated by their signature on successive rent increase notices properly issued by the Landlord. 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 a tenant receives the notice.

Following this, s. 46(4) says that within 5 days after receiving a notice under this section, a tenant must 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, I find they provided the 10-Day Notice by service in person. The Tenant then failed to pay the rent owing by March 12, within the five days after the service date of March 7. 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, March 17, 2022. In line with this, I grant the Landlord an Order of Possession.

Because the Landlord provided that the Tenant fully paid all rent amounts owing, there is no provision for money owed to the Landlord in this hearing. 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 s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. 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: August 17, 2022

Residential Tenancy Branch