



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 initiated by way of a Direct Request Proceeding but was adjourned to this participatory hearing by the Adjudicator who initially considered the Application for Dispute Resolution.

This participatory hearing was convened to consider the Landlord's application for an Order of Possession, for a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 28, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in May of 2022 were sent to the rental unit, via registered mail. The Landlord submitted a Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing. As the documents were properly served to the Tenant, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The Landlord was given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. He affirmed that he would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The Landlord was advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. He affirmed he would not record any portion of these proceedings.

Preliminary Matter #1

In the Application for Dispute Resolution the Landlord applied for unpaid rent from May of 2022. At the hearing the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from March and April of 2022.

I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including rent that became due after the Application for Dispute Resolution was filed.

I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Preliminary Matter #2

At the hearing the Landlord asked if the Application for Dispute Resolution could be amended to include compensation for damages unrelated to unpaid rent. He was advised that the Application for Dispute Resolution could not be amended to include unrelated claims for compensation.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession and/or to a monetary Order for unpaid rent?

Background and Evidence

The Landlord stated that:

- this tenancy began on August 20, 2020;
- the Tenant initially agreed to pay rent of \$2,000.00;
- rent was reduced to \$1,975.00 sometime in 2021;
- rent is due by the first day of each month;
- rent has not been paid for March, April, May, June, or July of 2022;
- on May 22, 2022 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was mailed to the Tenant, via registered mail;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declares the rental unit must be vacated by May 16, 2022;
- the rental unit was vacated in late July of 2022; and

- he would like an Order of Possession in the event it is needed.

Analysis

On the basis of the undisputed testimony of the Landlord, I find that this tenancy began on August 20, 2020 and that the Tenant was, during the latter portion of the tenancy, the Tenant was required to pay rent of \$1,975.00 by the first day of each month.

Section 26(1) of the *Residential Tenancy Act (Act)* requires tenants to pay rent to their landlord. On the basis of the undisputed evidence, I find that the Tenant has not paid the rent that was due on March 01, 2022, April 01, 2022, and May 01, 2022. I therefore find that the Tenant must pay rent of \$5,925.00 for these 3 months (3 X \$1,975.00), pursuant to section 26 of the *Act*.

If rent is not paid when it is due, section 46(1) of the *Act* permits landlords to end the tenancy by serving a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, was mailed to the Tenant on May 02, 2022. I find this serves as proper notice that the Landlord wishes to end the tenancy pursuant to section 46(1) of the *Act*.

In the absence of evidence to the contrary, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is deemed received by the Tenant on May 07, 2022, pursuant to section 90 of the *Act*.

Section 46(4) of the *Act* stipulates that a tenant has five days from the date of receiving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice to End Tenancy. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy ended on the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

On the basis of the undisputed testimony of the Landlord, I find that the rental unit was vacated in July of 2022. I therefore find, pursuant to section 44(1)(d) of the *Act*, that this tenancy ended when the unit was vacated. As the Landlord was not certain precisely when the unit was vacated in July of 2022, I am unable to precisely determine when the tenancy ended in July of 2022.

As the tenancy ended pursuant to section 44(1)(d) of the *Act*, I find that the Landlord now has legal possession of the rental unit and an Order of Possession is not required. I therefore dismiss the application for an Order of Possession.

As the Tenant remained in possession after the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Tenant remained obligated to pay rent until the unit was vacated. I therefore find that the Tenant was obligated to pay \$1,975.00 in rent for June of 2022.

As the Landlord does not know precisely when the rental unit was vacated in July of 2022, I am unable to accurately determine how much rent is owed for July of 2022. I therefore dismiss the claim for unpaid rent for July of 2022.

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, in the amount of \$8,000.00, which includes \$7,900.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I therefore grant the Landlord a monetary Order for \$8,000.00. In the event the Tenant does not voluntarily 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.

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: September 18, 2022

Residential Tenancy Branch