



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VK (WESTEND) INVESTMENT
LP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on August 8, 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 the September 20, 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 tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 18, 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 September 21, 2022, one day after they received the previous Adjudicator's decision. The Tenant did not accept this registered mail. The Landlord presented a copy of the registered mail receipt showing delivery on September 21, and an image of the registered mail receipt with the tracking number. In the hearing, the Landlord provided that the address used was that of the rental unit where the Tenant resides.

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 November 1, 2020. The rent was \$1,350 per month payable on the first of each month. The Tenant paid a security deposit amount of \$675 and a pet damage deposit of \$675. A co-tenant moved out at the end of 2021, and the Landlord returned one of these deposits to that Tenant, leaving a single deposit remaining.

The two-page Addendum attached to the agreement confirms the Landlord is as named as such. In the hearing the Landlord confirmed the name used for the Landlord at the top of the tenancy agreement was in error.

This 10-Day Notice provided the date of July 22, 2022 as the end of tenancy. The Landlord served this to the Tenant via registered mail on July 12, 2022. The Landlord provided the mail receipt and registered mail tracking label in their evidence to show this was sent on that date. The Landlord also provided a "Proof of Service" document setting out their service to the Tenant using this method.

There is no record of the Tenant paying rent following this notice, within the required timeline of 5 days as set out on page 1 of the 10-Day Notice. The Tenant did not dispute this 10-Day Notice within that required timeframe.

In the hearing, the Landlord provided that the Tenant did not pay rent for any of the following months of August, September, and through to October. The total amount of rent owing, as of the date of the hearing, is \$8,100. The Landlord noted they received no answer to their communication, and no messages from the Tenant to them concerning the tenancy.

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 between the Landlord (as named on the Addendum) and this Tenant knew the terms and conditions therein. Most importantly I find the Tenant was aware of the current rent amount at all times. 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 registered mail to the Tenant. The Tenant then failed to pay the rent owing by July 22, within the five days after the deemed service date of July 17 as per s. 90(a) 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, July 22, 2022. In line with this, I grant the Landlord an Order of Possession.

As well, I provide the Landlord with a Monetary Order for the outstanding rent amount owing, as of the date of this hearing. That amount is \$8,100. The *Act* section 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 \$8,100. After setting off the security deposit amount of \$675, there is a balance of \$7,425. I am authorizing the Landlord to keep the security deposit amount and award the balance of \$7,425 as compensation for the rent amounts owing.

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 \$7,525. 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: October 18, 2022

Residential Tenancy Branch