



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 October 24, 2022 by way of conference call 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, and an Interim Decision was provided to the landlord.

Two agents of the landlord attended the hearing, one of whom gave affirmed testimony, and the other agent did not testify or take part in the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call.

The landlord's agent testified that the Interim Decision was received by the landlord on August 12, 2022 and the tenant was served with the Interim Decision and notice of this hearing, along with the landlord's evidentiary material on August 15, 2022 by registered mail. The landlord has provided a copies of a Registered Domestic Customer Receipt and Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act* and the Interim Decision.

All evidence of the landlord has been reviewed and is considered in this Decision.

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's agent testified that this fixed term tenancy began on November 15, 2021 and reverts to a month-to-month tenancy after November 15, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$2,200.00 is payable on the 1st day of each month, however the tenancy agreement, a copy of which has been provided for this hearing does not indicate a date. The tenant paid a partial amount of rent for the first month of the tenancy, and rent was thereafter due on the 1st day of each month. On November 15, 2021 the landlord also collected a security deposit from the tenant in the amount of \$1,100.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is the first floor of a 2-storey townhouse.

The landlord's agent further testified that on June 10, 2022 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated June 10, 2022 and contains an effective date of vacancy of June 21, 2022 for unpaid rent in the amount of \$9,150.00 that was due on June 10, 2022. A Proof of Service document has also been provided for this hearing which states that the tenant was served personally by another agent of the landlord on 06/10/2022 with a witness present. The landlord's agent testified that the day and month were incorrectly noted in the Proof of Service document, however the tenant was served on June 10, 2022 and not on October 6, 2022.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice.

The landlord has also provided 2 Direct Request Worksheets and the landlord's agent testified that the tenant owes the following:

- February, 2022 only a partial payment was made on the 1st of the month, leaving \$350.00 outstanding for that month;
- March, 2022 the tenant paid \$500.00 on the 1st of the month, leaving \$1,700.00 outstanding for that month;
- No rent payments were received by the landlord for the months of April, May, June or July, 2022;
- August, 2022 the tenant paid \$1,000.00 on the 19th of the month, leaving a balance of \$1,200.00 outstanding for that month; and

- No rent payments were received by the landlord for the months of September or October, 2022.

Previous notices to end the tenancy had been issued to the tenant, however the tenant paid the rent late so no further action was taken.

Analysis

Firstly, the *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect, or to dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date contained in the Notice.

In this case, the landlord's agent testified that the tenant did not pay the rent in full and arrears have continued to accumulated. The landlord's agent also testified that the tenant has not served the landlord with an application 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.

The tenant must be served with the Order of Possession, and if the tenant fails to vacate the rental unit, the Order of Possession may be filed in the Supreme Court of British Columbia and enforced.

With respect to the monetary claim, I accept the undisputed testimony of the landlord's agent that the tenant is in arrears of rent the amount of \$16,450.00 as follows:

- \$350.00 for February, 2022;
- \$1,700.00 for March, 2022;
- \$2,200.00 for April, 2022;
- \$2,200.00 for May, 2022;
- \$2,200.00 for June, 2022;
- \$2,200.00 for July, 2022;
- \$1,200.00 for August, 2022;
- \$2,200.00 for September, 2022; and
- \$2,200.00 for October, 2022.

I find that the landlord has established a claim of \$16,450.00 for unpaid rent.

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

The tenant must be served with the monetary order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

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 \$16,550.00.

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: October 25, 2022

Residential Tenancy Branch