



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request (the Application) that was filed by the Landlord under the *Residential Tenancy Act* (the Act) on May 26, 2022, seeking:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- A Monetary Order for unpaid rent; and
- Recovery of the filing fee.

On July 6, 2022, an adjudicator with the Residential Tenancy Branch (the Branch) rendered a decision adjourning the *ex parte* Direct Request process and convening a participatory hearing. A copy of this decision and a new notice of hearing for the participatory hearing was sent to the Landlord by e-mail on July 7, 2022. The participatory hearing was convened by telephone conference call at 9:30 AM on November 7, 2022, and was attended by the Landlord and their support worker S.H., both of whom provided affirmed testimony. The Tenant did not attend. The Landlord and their support worker were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The participants were advised that pursuant to rule 6.10 of the Residential Tenancy Branch Rules of Procedure (the Rules of Procedure), interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The participants were asked to refrain from speaking over me and any other participants, should they appear, and to hold their questions and responses until it was their opportunity to speak. The participants were

also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Rules of Procedure state that the respondent must be served with a copy of the Application and Notice of Hearing, and any documentary evidence to be relied on by the Applicant at the hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below. The Tenant's support worker S.H. stated that the original Notice of Dispute Resolution Proceeding Package (NODRP), which includes a copy of the Application and the Notice of Hearing (NOH), along with the documentary evidence before me from the Landlord, were sent to the Tenant by registered mail at the rental unit address on June 10, 2022. S.H. provided me with the tracking number, which I have recorded on the cover page of this decision. With the consent of S.H. and the Landlord, I tracked the package and verified that it was sent on June 10, 2022, as set out above, that a first notice was left on June 16, 2022, and that the package was delivered to the Tenant on June 18, 2022, with delivery confirmation available. As Branch records indicate that the original NODRP was emailed to the Landlord on June 9, 2022, I am therefore satisfied that the above noted documents were served on the Tenant on June 18, 2022, in accordance with the Act and the Rules of Procedure.

S.H. and the Landlord stated that the direct request decision, the new NODRP for the participatory hearing, and all of the above noted documents, were sent to the Tenant by registered mail at the rental unit address on July 8, 2022. S.H. and the Landlord provided me with the registered mail tracking number, which I have recorded on the cover page of this decision. During the hearing S.H. and I both tracked the registered mail package. Tracking information shows that the registered mail was sent on July 8, 2022, that a notice card was left on July 11, 2022, that a final notice card was left on July 17, 2022, and that the registered mail package was deemed undeliverable on July 27, 2022. At the hearing S.H. stated that the Tenant still resides in the rental unit. Based on the above and pursuant to section 90(a) of the Act, I find that the Tenant was deemed served with the above noted documents on July 13, 2022, 5 days after they were sent by registered mail. As Branch records indicate that the NODRP and the direct request decision were emailed to the Landlord on July 7, 2022, I find that the Tenant was deemed served with the NODRP for the purposes of the Act and the Rules of Procedure as set out above.

The NODRP states the date and time of the hearing, that the hearing will be conducted by telephone conference call and provides the phone number and access code for the hearing. It also instructs participants that they are to call into the hearing themselves no

more than five minutes before the start of the hearing. I confirmed that the details shown in the NODRP were correct and I note that the Landlord and their support worker were able to attend the hearing promptly using the information contained in the NODRP. Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. As the Landlord, their support worker, and I attended the hearing on time and ready to proceed, and I was satisfied that the Tenant was served with the NODRP as required by the Act and the Rules of Procedure, and therefore had notice of the hearing and an opportunity to attend, the hearing proceeded as scheduled, despite the absence of the Tenant or an agent acting on their behalf. Although the teleconference remained open for the 24-minute duration of the hearing, no one attended the hearing on the Tenant's behalf.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Act and the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision. At the request of the Landlord, a copy of the decision and any orders issued in their favor will be emailed to them at the e-mail address provided by them in the Application.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the periodic (month to month) tenancy began on June 1, 2021, that rent in the amount of \$2,000.00 is due on the first day of each month, and that a security deposit was carried forward. S.H. stated that these are the correct terms for the tenancy agreement, that the Tenant still resides in the rental unit, and that the \$1,000.00 security deposit carried forward is still held by the Landlord in trust.

S.H. stated that when the Tenant did not pay rent as required, the 10 Day Notice was posted to the door of the rental unit on May 16, 2022, in the presence of the downstairs tenant (of a different rental unit). A photograph was submitted in support of this testimony as well as an unwitnessed proof of service document. The 10 Day Notice before me is signed and dated May 16, 2022, has an effective date of May 25, 2022, and states that rent in the amount of \$2,000.00, due on May 1, 2022, remains unpaid.

S.H. provided affirmed and undisputed testimony that although the Tenant paid the May rent on June 13, 2022, it was not paid within the time period set out under section 46(4)(a) of the Act. S.H. stated that rent for June, July, August, September, and October have also now been paid, but rent for November is outstanding in the amount of \$2,000.00. S.H. and the Landlord sought authorization to withhold the \$1,000.00 security deposit held in trust by the Landlord in partial repayment of unpaid rent and the filing fee. Although S.H. stated that utilities are also outstanding, the Landlord is not seeking recovery of utilities at this time. S.H. stated that the Landlord is seeking an Order of Possession based on the 10 Day Notice as soon as possible.

Analysis

Section 46(1) of the Act outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) 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.

However, section 46(4) and 46(5) of the *Act* also state:

46(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(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), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the Act, I find that the Tenant was deemed served with the 10 Day Notice on May 19, 2022, three days after the Landlord states it was posted to the door of the rental unit. I also find that the Tenant was obligated to pay the monthly rent amount of \$2,000.00, on time and in full on the first day of each month. Based on the uncontested documentary evidence and affirmed testimony before me, I am satisfied that \$2,000.00 in rent was due at the time the 10 Day Notice was served, and that the Tenant neither paid this amount, nor filed an application for dispute resolution with the Branch seeking cancellation of the 10 Day Notice, within the 5-day time period set out under section 46(4)(a) of the Act. I therefore find that the Tenant was conclusively presumed, pursuant to section 46(5) of the Act, to have accepted the end of the tenancy as a result of the 10 Day Notice, and required to vacate the rental unit by the effective date of May 25, 2022. As the effective date of the 10 Day Notice has passed, I grant the Landlord an Order of Possession for the rental unit, effective two days after service on the Tenant, pursuant to sections 55(2)(b) and 68(2)(a) of the Act and I order the Tenant and all occupants to vacate the rental unit in compliance with that Order of Possession.

As I am also satisfied that the Tenant has not paid rent for November of 2022, and I have already found above that the tenancy ended on May 25, 2022, pursuant to section 46(5) of the Act, I therefore find that the Landlord is entitled to compensation for overholding in the month of November 2022, pursuant to section 57(3) of the Act and Residential Tenancy Policy Guideline (Policy Guideline) #3, section B, in the amount of \$460.25, calculated at a per diem rate of \$65.75 between November 1, 2022, and November 7, 2022, the date of the hearing. If the Landlord incurs additional expenses related to the Tenant's overholding of the rental unit after the date of the hearing, the Landlord may seek recovery of these costs by filing an application for dispute resolution with the Branch seeking recovery of these costs from the Tenant.

Pursuant to section 72(1) of the Act, I also award the Landlord recovery of the \$100.00 filing fee. Pursuant to section 72(2)(b) of the Act, and in accordance with the Landlord's request, I therefore authorize the Landlord to withhold \$560.25 from the Tenant's security deposit for recovery of the above owed amounts. The remaining balance must be dealt with in accordance with the Act.

Conclusion

Pursuant to section 55 of the Act, I grant an Order of Possession to the Landlord effective **Two days after service on the Tenant**. 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 72(2)(b) of the Act, the Landlord is permitted to retain **\$560.25** of the security deposit for compensation for overholding up to and including November 7, 2022, and recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: November 7, 2022

Residential Tenancy Branch