



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNRL-S, OPR, CNR-MT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for unpaid rent, to keep all or part of the security deposit, for an Order of Possession, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and for more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord stated that on July 22, 2022 the Landlord's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in July of 2022 were personally served to the Tenant. The Tenant acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Tenant stated that the Tenant's Dispute Resolution Package was mailed to the Landlord, although she does not recall the date of service. The Landlord acknowledged receipt of the Package.

On July 08, 2022 the Tenant submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of these proceedings to the Residential Tenancy Branch. The Tenant stated that this Notice was not served to the Landlord as evidence for these proceedings. I find service of the Ten Day Notice to End Tenancy

for Unpaid Rent or Utilities to the Landlord is irrelevant, as that document is already before me on the basis of the evidence submitted by the Landlord.

On November 17, 2022 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was not served to the Landlord. As this evidence was not served to the Landlord, it was not accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to keep all or part of the security deposit?

Should the Landlord be granted an Order of Possession or should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Should the Tenant be granted more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities?

Background and Evidence

The Landlord and the Tenant agree that:

- the tenancy began on January 01, 2022;
- the Tenant agreed to pay monthly rent of \$1,600.00 by the first day of each month;
- the Tenant paid a pet damage deposit of \$800.00 and a security deposit of \$800.00;
- sometime in June of 2022, the Tenant paid \$400.00 towards her rent for July of 2022;
- the Tenant has not yet paid the remaining rent that was due on July 01, 2022;
- apart from rent for July of 2022, no other rent is currently due;

- on July 01, 2022 the Landlord sent the Tenant the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of this dispute, via email;
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dated January 07, 2022; and
- the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities declares that the rental unit must be vacated by July 10, 2022.

The Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was dated January 07, 2022 in error. She stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities should have been dated July 01, 2022.

The Tenant stated that she received the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, via email, on July 01, 2022.

The Tenant stated that the Landlord agreed that the Tenant could pay her rent late in July of 2022. The Landlord denies this submission.

The Tenant stated that she has a text message from the Landlord in which the Landlord gives her permission to pay her rent late in July of 2022. That message is not in the evidence before me.

The Tenant was given the opportunity to read messages that corroborate her testimony that rent could be paid late in July of 2022. None of the information read out convinces me that the Landlord agreed rent could be paid late in July.

The Landlord and the Tenant agree that the Tenant asked the Landlord to serve her with the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Tenant stated that she asked for the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities because she understood it would assist in securing funding for rent due in July of 2022.

The Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served because rent had not been paid and not because the Tenant had asked for one to be served.

The Tenant stated that on July 05, 2022 she offered to pay the outstanding rent of \$1,200.00 to the Landlord, but the Landlord would not accept it. The Landlord stated

that July 06, 2022 the Tenant offered to pay the outstanding rent of \$1,200.00, but the Landlord declined the offer.

The Landlord stated that she applied for a monetary Order of \$1,450.00, which included \$250.00 in late fees. The Landlord submitted a copy of an addendum to the tenancy agreement which declares, in part, that the Tenant must pay a late fee of \$100.00 for the “first offence” and \$250.00 for any subsequent late rent payments.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was required to pay rent of \$1,600.00 by the first day of each month; that she only paid \$1,200.00 of the rent that was due on July 01, 2022; and that rent for July of 2022 is still in arrears by \$1,200.00.

In adjudicating this dispute, I have placed no weight on the Tenant’s submission that the Landlord gave her permission to pay rent late in July of 2022. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant’s testimony that she had permission to pay that rent late or that refutes the Landlord’s testimony that no such permission was given.

Section 26(1) of the *Residential Tenancy Act (Act)* stipulates that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. As no evidence was presented to establish that the Tenant had the right to withhold rent for July of 2022, I find that the Tenant owes \$1,200.00 in rent for July of 2022. As such, I grant the Landlord’s application for a monetary Order of \$1,200.00 for unpaid rent.

Section 46(1) of the *Act* stipulates that 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.

On the basis of the undisputed evidence, I find that the Landlord served the Tenant this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on July 01, 2022 because the Tenant did not pay all of the rent due on July 01, 2022.

Section 46(1) of the *Act* permits a landlord to serve a tenant with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after the day it is due. As rent for July of 2022 was due on July 01, 2022, the Landlord was entitled to serve the Ten Day

Notice to End Tenancy for Unpaid Rent or Utilities on, or after, July 02, 2022. The Landlord did not have the right to serve the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on July 01, 2022, as rent was not overdue on that date.

As the Landlord did not have the right to serve the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on July 01, 2022, I find that the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has no force or effect. As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has not force or effect, I dismiss the Landlord's application for an Order of Possession on the basis of that Notice.

As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of this dispute is of no force or effect, I find it is not necessary for me to consider the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities or for more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

In the event the Tenant does not pay the outstanding rent from July of 2022, the Landlord retains the right to serve another Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on the basis of that outstanding rent.

The parties were advised that I could not consider a claim for late fees at these proceedings, as the Landlord did not apply for those fees in her Application for Dispute Resolution.

For the benefit of both parties, section 7(1)(d) of the *Residential Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 7(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

In the event that Landlord has collected late fees that do not comply with the legislation and those late fees are not refunded to the Tenant, the Tenant has the right to file an Application for Dispute Resolution seeking to recover any non-compliant late fees.

I find that the Landlord's 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's application for an Order of Possession is dismissed.

As the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is the subject of this dispute is of no force or effect, it was not necessary for me to consider the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities or the application for more time to apply to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

The Landlord has established a monetary claim, in the amount of \$1,300.00, which includes \$1,200.00 in unpaid rent from July of 2022 and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. I grant the Landlord a monetary Order for \$1,300.00. 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.

I have not considered the Landlord's application to retain the security and/or pet damage deposit as I am not certain the Landlord wishes to apply those deposits to the unpaid rent, given that the tenancy is continuing. In the event the Landlord wishes to apply those deposits to the debt, the Landlord has the right to retain money from those deposits in full or partial satisfaction of the monetary claim.

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

Dated: November 17, 2022

Residential Tenancy Branch