



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On June 20, 2022, the landlord applied for an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated June 6, 2022 (the 10 Day Notice).

The hearing was attended by the landlord, the tenant, and occupant CC. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Section 55 of the Act states that:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

...

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

...

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

Preliminary Matter

In a previous hearing, noted on the cover page of this decision, it was determined that CC was an occupant, not a tenant. Therefore, in accordance with section 6(1), I have amended the application to remove CC as an applicant.

Issues to be Decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

The parties agreed on the following particulars of the tenancy. Rent is \$1,200.00, due on the first of the month; and the tenant did not pay a security deposit or pet damage deposit.

The parties disagree on when the tenancy began.

The tenancy agreement submitted as evidence does not name the current tenant. It notes that the tenancy began January 1, 2017, and that rent is \$1,200.00 and includes electricity.

The landlord testified that the tenancy began with a different tenant, who was not present for the hearing. Tenant SS testified that he began paying rent in January 2017. The landlord submitted that SS “took over the tenancy” as of December 1, 2018. In a text message dated November 25, 2018, tenant SS tells the landlord he is prepared to “take over the lease” and that CC will likely move in.

Occupant CC testified that he is a tenant, and that his tenancy began on March 18, 2018, after the landlord demanded that he pay rent. In a written submission, CC states that from March 2018 to December 2018 he paid \$250.00 a month, for a total of \$2,000.00, to spend weekends at the rental unit. The landlord’s written submission and Rental Finances document state that the rent remained at \$1,200.00 during this period. Submitted as evidence are two e-transfer receipts from CC to the landlord, respectively dated March 18, 2018 and December 18, 2018, each for \$250.00. No receipt for rent paid by the tenant is submitted as evidence to demonstrate the total amount of rent paid for these two months.

The parties agree there is no written tenancy agreement, and that the original agreement between the parties was that utilities were included in the rent.

The landlord testified the tenant agreed in writing to pay more for hydro, referring to a text exchange beginning March 15, 2019. In the text to the tenant, the landlord states that the hydro bill is too high, that the tenant must pay \$200.00 toward the bill, and that going forward the tenant must pay any of the hydro bill that is over \$100.00. SS wrote back saying that he will transfer the \$200.00 to the landlord.

The tenant testified that he thought he had not choice but to pay the additional amount, and did not agree to change their previous agreement that utilities were included in the rent.

The landlord testified that he served the 10 Day Notice on the tenant by registered mail to the rental unit on June 6, 2022, and provided a tracking number as noted on the cover page of the decision. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The Notice indicates the tenancy is ending because the tenant has failed to pay rent in the amount of \$1,200.00, due on June 1, 2022.

The tenant testified he did not receive the 10 Day Notice. The tenant testified that there was a package to be picked up in June 2022, but because when he called the post office they said there was no return name on it, the tenant did not pick it up.

The landlord testified the tenant now owes outstanding rent as follows. The landlord testified that rent for September 2022 was reduced to \$1,100.00 by the prior hearing decision:

Month in 2022	Rent owing	Rent paid	Monthly balance owing
June	\$1,200.00	\$0.00	\$1,200.00
July	\$1,200.00	\$0.00	\$1,200.00
August	\$1,200.00	\$0.00	\$1,200.00
September	\$1,100.00	\$0.00	\$1,100.00
October	\$1,200.00	\$0.00	\$1,200.00
Total owing			\$5,900.00

The landlord testified the tenant paid rent in full for November and December 2022.

The tenant testified he agreed with the landlord's testimony on rent payments. The tenant submitted that he had withheld rent due to illegal hydro payments he had made previously. The tenant's written submission also states that an illegal rent increase was paid by occupant CC, totalling \$2,000.00. The tenant submitted he is entitled to deduct \$6,000.00 in total from the rent, and testified that he resumed regular rent payments in November 2022. Submitted as evidence by the tenant is a Rent Recovery Invoice, and two emails to the landlord, dated June 30, 2022 and November 3, 2022, which summarize the rent deductions.

The landlord's Rental Finances document records the hydro payments made by the tenant to the landlord, and states that over the course of the tenancy, the tenant paid \$1,000.16 for hydro.

The tenant testified that in June 2019 they made an additional hydro payment not recorded in the landlord's evidence, so there may be other unrecorded payments by the tenants. The tenant did not provide a detailed breakdown of the hydro payments he made; the emails reference only "varied amounts every second month (average of \$200) since April 1st for 38 months."

Analysis

Pursuant to section 46(1) of the Act, 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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (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.

Based on the evidence before me, I find the landlord served the 10 Day Notice on the tenant on June 6, 2022 in accordance with section 88 of the Act, and deem it received by the tenant on June 11, 2022, in accordance with section 90.

I find that the tenant did not file an application for dispute resolution within 5 days of June 11, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the 10 Day Notice, June 21, 2022.

The landlord is entitled to an order of possession.

As the tenant still resides in the rental unit, I find the tenancy ended on the date of the hearing, December 6, 2022, pursuant to section 68(2)(a) of the Act.

The tenant testified he is entitled to deduct \$6,000.00 from rent, including \$2,000.00 for an illegal rent increase, and an unspecified amount in hydro payments, as in the initial agreement between the parties, utilities were included in the rent.

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The only reasons provided for in the Act to deduct all or a portion of the rent are:

- When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the Act);
- When section 33 of the Act in relation to emergency repairs applies;
- When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the Act);
- When the landlord issues the tenants a notice to end tenancy under section 49 of the Act for landlord's use of property (section 51 of the Act);
- When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the Act); and
- When the landlord consents to the tenants withholding rent.

As the payment of hydro is not one of the reasons provided for in the Act that a tenant may deduct all or a portion of the rent, I find the tenant was not entitled to withhold rent to recover hydro payments.

The occupant submitted that the landlord imposed a rent increase above the amount allowed by law, because the landlord demanded, from March to December 2018, that the occupant pay \$250.00 a month, for a total of \$2,000.00, to spend weekends at the rental unit. The tenant submitted as evidence two e-transfer payments for \$250.00, paid by the occupant. No other rent receipts for the months in question are submitted to demonstrate the total amount of rent paid. The landlord's written submission and Rental Finances document state that the rent remained at \$1,200.00 during this period.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, the onus is on the tenant to prove he was entitled under the Act to deduct an amount from rent.

I favour the landlord's position that rent of \$1,200.00 was paid for the months in question, as it is recorded as such in his Rental Finances document, and because the tenant has failed to provide evidence demonstrating the total rent amounts paid for these months, and therefore has not demonstrated it was more than \$1,200.00.

Therefore, I find the tenant has failed to prove he was entitled to withhold rent due to a rent increase above the amount allowed by law.

Considering the evidence before me, on a balance of probabilities, I find the landlord is entitled to \$5,900.00 in unpaid rent.

Conclusion

The landlord is granted an order of possession, which will be effective two days after it is served on the tenant. The order of possession must be served on the tenant. The order of possession may be filed and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$5,900.00 for unpaid rent. The monetary order must be served on the tenant. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: December 19, 2022

Residential Tenancy Branch