



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR

Introduction

On September 21, 2022 the Landlord filed an Application at the Residential Tenancy Branch for:

- an Order of Possession in line with the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”);
- compensation for unpaid rent.

The matter proceeded by way of a hearing pursuant so 74(2) of the *Residential Tenancy Act* (the “Act”) on March 10, 2023. Both the Landlord and the Tenant attended the teleconference hearing.

Preliminary Matter – Landlord’s service of Notice of Dispute Resolution Proceeding and evidence

The Landlord initially applied for an order of possession and compensation for unpaid rent to the Residential Tenancy Branch via the Direct Request proceeding method. This is a non-participatory method available to parties in certain circumstances, such as a 10-Day Notice, where an affected tenant does not apply to dispute it.

The Residential Tenancy Branch processed the Landlord’s direct request Application, and an Adjudicator reviewed the Landlord’s material. The Adjudicator ordered that the matter convert to a participatory hearing due to a discrepancy between the Tenant named by the Landlord on their Application, and the tenant as shown in the tenancy agreement provided by the Landlord.

To notify the Tenant about this scheduled participatory hearing, the Landlord served the Notice of Dispute Resolution Proceeding document to the Tenant via registered mail. As stated by

the Landlord in the hearing, this was “before the deadline date” of October 8, 2023. The Landlord provided the registered mail tracking number for this initial piece to the Tenant, as well as a second package they sent containing evidence on November 18.

In the hearing the Tenant could not confirm the exact date they received the information from the Landlord. I accept the Tenant’s statement as confirmation that they received the information about this hearing, as well as the Landlord’s evidence, as required. I find it more likely than not that this was within the required timeline for the Landlord to provide that information.

I conclude that the Landlord delivered the evidence they intend to rely on for this hearing to the Tenant via registered mail as required. I give full consideration to this evidence herein.

Preliminary Matter – Tenant’s request for adjournment

At the outset of the hearing, the Tenant requested an adjournment in this matter. They had witnesses who could attend, yet did not, because of a health challenge. These witnesses would attest to their claim for the equivalent of 12 months’ rent from the Landlord because of the Landlord’s “own-use” end to that separate tenancy.

The Tenant also intended to produce evidence for this hearing; however, they acknowledged they missed the timeline for doing by one day. As well, the Tenant stated their own illness in this hearing.

The Landlord stated their objection to the Tenant’s adjournment request. The Landlord stressed they followed the process in this matter, and the Tenant was “misleading this whole process.”

As per Rule 7 in the *Residential Tenancy Branch Rules of Procedure*, during the hearing I found the circumstances in this matter did not warrant an adjournment. I found there was a prejudice to the Landlord in facing a substantial delay in rescheduling the matter where the Tenant has ostensibly remained in the rental unit after the issuance of the 10-Day Notice, without paying rent during the interim period prior to the hearing. As well, I find the witness account would be of marginal value to the proceeding, given the description by the Tenant. The Landlord had the Notice of Dispute Resolution Proceeding in place and sent to the Tenant in October 2022, some 4 months prior to this scheduled hearing, and this left the Tenant ample time to prepare for the hearing. The hearing proceeded as scheduled with no adjournment.

Issues to be Decided

Is the Landlord entitled to an Order of Possession in line with the 10-Day Notice, pursuant to s. 55 of the *Act*?

Is the Landlord entitled to compensation for rent amounts in the rental unit, pursuant to s. 55(4)) and/or s. 67 of the *Act*?

Background and Evidence

In their evidence, the Landlord provided a copy of the tenancy agreement. This was with a former Tenant “JB”. The set amount of rent, as set out in the agreement, was \$1,200 per month, payable on the first of each month. The tenancy started on September 1, 2017.

The Landlord addressed the discrepancy in names – *i.e.*, between the tenancy agreement with JB and the Tenant named as Respondent in this hearing – by providing that the Tenant JB deceased in early 2022. The Tenant named as Respondent, who attended the hearing, was subletting from JB. The Landlord provided that, when JB deceased, the Respondent Tenant continued to pay rent for some time thereafter, and remained in the rental unit.

The Respondent Tenant recalled the Landlord imposing a rent increase and “demanded new paperwork”; however, the Tenant stated in the hearing that they signed a document for this Landlord in 2017. They confirmed the basic rent amount, and that no utilities were included in that rent amount.

The Landlord issued the 10-Day Notice on September 1, 2022, for the set end-of-tenancy date of September 10, 2022. This was for the unpaid rent amount of \$3,600 listed as payable on September 1, 2022. An unpaid utility amount of \$1,859.88 also formed the basis for this 10-Day Notice.

The Landlord indicated on the document that they served this to the Tenant by attaching the document to the door of the rental unit. Also in the Landlord’s evidence is a “Proof of Service” in which they set out how they served the document in this fashion on September 1, 2022.

In the hearing the Tenant confirmed they received the 10-Day Notice. In the hearing they stated the Landlord had blocked their communication, meaning they could not pay the monthly rent. They make the effort to pay each month; however, the Landlord does not respond and

won't accept rent payments when they are due. They are unable to call the Landlord to rectify the situation.

The Tenant described residual issues in the rental unit of repairs, a situation that they submitted made them very sick.

The Landlord in the hearing also set out that the Tenant did not pay rent for the subsequent months after the 10-Day Notice in September. This includes October 2022 through to March 2023, the month of the hearing. Though the Tenant paid only a partial amount for June 2022, the Landlord stated they would waive the balance owing for that particular month.

For utilities owing, the Landlord presented a utility bill in their evidence, dated May 6, 2022. This is for the total amount of \$3,719.77, which is one-half of the duplex structure on the rental unit property. This makes the Tenant responsible for one-half of that amount, being the \$1,859.88 amount set out on the 10-Day Notice.

Analysis

I find the basic amount of rent -- \$1,200 as set out in the tenancy agreement -- is established fact. I find the Tenant named as the Respondent in this hearing has occupied the rental unit for the whole time after the named Tenant JB deceased. The Respondent Tenant was a sub-tenant of JB and has remained in the rental unit.

The *Act* s. 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not a landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. The wording appears thus:

- (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations of the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The *Act* s. 46(1) provides authority for a landlord to issue a notice to end a tenancy if rent is unpaid "on any day after it is due", with an end-of-tenancy date that is "not earlier than 10 days after the date the tenant receives the notice."

In this dispute the Landlord issued the 10-Day Notice on September 1, 2022, serving that to the Tenant on that same date. The deemed service date for this mode of service is September 4, 2022, the third day after it was attached as per s. 90(c).

The Tenant confirmed they received the document attached to the door of the rental unit. This was in direct response to my question confirming this information. The Tenant did not make an Application to dispute this end-of-tenancy notice within 5 days of the deemed service date as required by s. 46(4).

The *Act* s. 46(5) sets out that, where a tenancy receives a 10-Day Notice and does not pay the rent or make an application within 5 days, they are “conclusively presumed to have accepted that the tenancy ends on the effective date of the notice”. Additionally, they must vacate the rental unit by the date indicated on the 10-Day Notice. Where a tenant does not vacate, they are considered overholding in the rental unit.

Based on the foregoing, I find that the Tenant here 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, September 10, 2022.

On my review, I find the 10-Day Notice complies with the requirements of form and content as required by s. 52; therefore, for this Application by the Landlord, I find they are entitled to an Order of Possession as per s. 55(4)(a).

The *Act* s. 55(4)(b) specifies that I must grant repayment of unpaid rent where a tenant did not make an application for dispute resolution within the specified timeline. As per s. 55(4)(b), I grant an award for compensation to the Landlord in the amount of \$10,800 for the full amount of rent from July 2022 through to March 2023, which is nine consecutive months.

The Landlord also provided evidence of a utility amount owing, carried over from May 2022. I am not certain of the Landlord notifying this Tenant of that outstanding utility amount prior to issuing the 10-Day Notice that set out that specific amount. There is no evidence of the Landlord giving notice of this amount to the Tenant, and no evidence of the Landlord stating plainly that the tenancy would end if this amount remained unpaid.

As well, I find a discrepancy in that the reminder notice from the municipality, the Landlord’s evidence for this account, refers to the adjacent rental unit (*i.e.*, that ending in -412) which the Landlord confirmed was not the specific rental unit where the Tenant resided (*i.e.*, ending in -414). I am not satisfied of the legitimacy of this account, without further evidence from the Landlord. I dismiss this piece of the Landlord’s request for compensation for this reason.

Conclusion

For the reasons outlined above, I grant the Landlord's Application for an Order of Possession, in line with the 10-Day Notice. The Order of Possession is effective **TWO DAYS** after they serve it to the Tenant. Should the Tenant fail to comply with this Order, the Landlord may file this Order with the Supreme Court of British Columbia where it may be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$10,800, pursuant to s. 55(4) of the *Act*. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order in the Provincial Court (Small Claims) where it will be 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: March 13, 2023

Residential Tenancy Branch