



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 20, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

Both parties attended the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence. No service issues were raised.

The landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

During the hearing, the Landlord specified that, since the application was filed, he has been in discussions with tenants' debt consolidation company, and an agreement has been reached whereby he will be paid most of the unpaid rent. The Landlord was willing to allow that process to play out and stated that he does not wish to obtain a monetary order as part of this proceeding, to allow time for the debt consolidator to repay the money owed by the Tenants. In consideration of this, I amend the Landlord's application

accordingly, and remove his request for a monetary order for unpaid rent and for his request to be reimbursed for the filing fee. Should the debt consolidation process not come to fruition, the Landlord is granted leave to reapply for monetary compensation for unpaid rent. This hearing was just about the order of possession, based off the 10 Day Notice, which will be addressed further below.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

Both parties agree that monthly rent is \$3,500.00, due on the first of the month.

The landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which was left in the Tenant's mailbox on October 3, 2022. The 10 Day Notice specified that \$7,000.00 (September and October 2022) was unpaid at that time.

The landlord testified that the tenants only paid \$3,900.00 on October 8, 2022, and \$1,400.00 on October 10, 2022, and nothing further after that point.

The Tenants do not dispute the above noted amounts or payments.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms 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 rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find that the tenants had a balance of unpaid rent in the amount of \$7,000.00 at the time the 10 Day Notice was issued. On October 2, 2022, the 10 Day Notice was put in the Tenants' mailbox. Pursuant to section 88 and 90 of the *Act*, documents delivered in this manner are deemed served after 3 days. I find the tenant is deemed to have received the 10 Day Notice on October 5, 2022.

The tenants had 5 days to pay rent in full or file an application for dispute resolution. Although some payments were made in October, I note these were only partial payments. As such, I find the tenants are conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenants.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 14, 2023

Residential Tenancy Branch