



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPU, MNRL-S

Introduction

On November 2, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking a Monetary Order for unpaid rent or utilities pursuant to Section 67 of the *Act*.

The Landlord attended the hearing seven minutes after it was set to commence, with W.R. attending as an agent for the Landlord. However, the Tenant did not attend at any point during the 55-minute teleconference.

Rule 7.1 of the Rules of Procedure (the “Rules”) stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:55 AM. Only representatives from the Landlord’s side dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that I was the only other person who had called into this teleconference.

At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Records indicate that the Notice of Hearing package was sent to the Landlord on November 17, 2022, with instructions to serve this to the Tenant by November 20, 2022, at the latest. W.R. advised that this package, including the Landlord's documentary evidence, was served to the Tenant by hand on November 26, 2022. However, he did not have a witness with him, and therefore did not have any proof of service to corroborate his testimony that this was indeed done. When he was questioned why he served this package late, he stated that he wanted to ensure that the Tenant received it personally, despite being advised that the *Act* provided other service options so that service of this package complied with the Rules. The Landlord advised that the Tenant texted him later to confirm that she received this package.

While this package was served late, contrary to Rule 3.1 of the Rules, given that the hearing was scheduled over four months later, I do not find that this late service of six days was prejudicial to the Tenant. Based on the solemnly affirmed testimony from W.R. and the Landlord, I am satisfied that the Tenant has been sufficiently served this package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on September 1, 2020, that the rent was currently established at an amount of \$1,750.00 per month, and that it was due on the

first day of each month. A security deposit of \$875.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

W.R. was initially unsure when the Notice was served, and after several minutes, finally solemnly affirmed that it was served by being attached to the Tenant's door on July 25, 2022, despite the Notice being dated July 26, 2022. While W.R. and the Landlord advised that this uncertainty was due to this Notice being served so long ago, given that they had ample time to prepare for this hearing, it was unclear why neither of them were familiar with the details of their file when providing testimony.

The Notice indicated that \$1,750.00 was owing for rent on July 1, 2022, and that \$260.00 was owing for utilities following a written demand for them given on July 17, 2022. When it was explained to the Landlord that utilities could not be included on this Notice, as unpaid rent, unless a written demand for them was given and the Tenant had not paid them within 30 days, he stated that he was no longer seeking remedy for the utilities.

With respect to the rent that was in arrears, the Landlord described the history of the tenancy, and then advised that the Tenant did not pay any rent for July 2022. He confirmed that the Tenant paid rent in cash and that receipts were given for those payments as required by the *Act*; however, there was no documentary evidence submitted to corroborate the legitimacy of this submission.

He testified that the Tenant sent him a note acknowledging that rent was late due to her roommates moving out. He confirmed that the Tenant did not pay any rent for July, August, September, October, or November 2022. As well, he advised that the Tenant paid \$920.00 on December 23, 2022, \$915.00 on January 27, 2023, \$700.00 on February 27, 2023, but no rent for March 2023. Again, there was no documentary evidence submitted to substantiate any of these payments. Regardless, he confirmed that the Tenant is in arrears for a total of \$13,215.00 as of March 1, 2023.

W.R. advised that the Tenant has had ongoing issues with paying rent on time, and that the Tenant did not pay any rent for July 2022. Furthermore, he testified that the Tenant did not pay any rent in July 2022, that she did not pay any amount of rent to cancel the Notice, and that the Tenant did not dispute the Notice. Moreover, he confirmed the Landlord's submissions above regarding what rent was and was not paid.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. Based on my review of the Notice, I am satisfied that it is a valid Notice for unpaid rent. As the utilities amount of \$260.00 was not valid based on a written demand being given only nine days prior to the date on the Notice, this matter will not be considered in this Decision.

As W.R. solemnly affirmed that the Notice was attached to the Tenant's door on July 25, 2022, the Tenant was then deemed to have received the Notice on July 28, 2022. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that "*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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.*"

As the Notice was deemed received on July 28, 2022, the Tenant must have paid the rent in full or disputed the Notice by August 2, 2022, at the latest. While the Landlord claimed that the Tenant did not pay any amount of rent for July 2022, the Landlord submitted a letter as documentary evidence, dated July 29, 2022, along with a cheque demonstrating that \$1,200.00 was allegedly paid to the Landlord. Based on the

Landlord's own documentary evidence, this contradicts his, and W.R.'s, solemnly affirmed testimony that no rent was received for July 2022. This inconsistency causes me to question the credibility and reliability of the Landlord's, and W.R.'s testimony, on the whole.

At this time, it should be noted that from the outset of the hearing, both the Landlord and W.R. were extremely disorganized, they had little knowledge and could provide scant details of what transpired during this tenancy, and they submitted limited documentary evidence to support their position of non-payment of rent. Furthermore, while the Landlord complained of the lengthy time it took to have a hearing on this matter scheduled, he was questioned why he waited until November 2, 2022, to file this Application given that the Tenant had allegedly not paid rent in July 2022, and this Application could have been filed for months prior.

The Landlord replied that the Tenant promised to pay the rent after receiving a settlement from another party, but she never ended up paying. As well, he placed the blame on the delay of making this Application on W.R. Furthermore, the Landlord was also advised of the Direct Request expedited process for non-payment of rent issues, and W.R. testified that he was not provided with information regarding this process when he was in contact with the Residential Tenancy Branch. However, records indicate that on November 9, 2022, it was suggested to them that this type of Application may have qualified for the Direct Request process, but it does not appear that any further action was taken by the Landlord or W.R.

Given the haphazard manner with which the Landlord, and/or W.R., approached the management of this tenancy, in addition to their contradictory testimony and the inconsistent documentary evidence of what rent was received for July 2022, I find that these factors cause me to question further the reliability of the Landlord and of W.R.

Despite this, I am satisfied from the Landlord's, and W.R.'s, solemnly affirmed testimony that the Tenant was in arrears of \$1,750.00 for rent on July 1, 2022. While it appears that \$1,200.00 was paid to the Landlord on or around July 29, 2022, there is no evidence before me that the remaining \$550.00 was paid by August 2, 2022, to cancel the Notice. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that she breached the *Act* and jeopardized her tenancy. Moreover, as there is no evidence before me that the Tenant disputed the Notice, I am satisfied that the Tenant was conclusively presumed to have accepted the Notice and that the tenancy should end.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

However, with respect to the actual amount of rent owing to date, given that the solemnly affirmed testimony of the Landlord, and W.R., contradicts the documentary evidence submitted regarding how much rent has or has not been paid, I am not satisfied that the Landlord knows how much rent is actually in arrears to date. As such, the Landlord's claim for monetary compensation is dismissed with leave to reapply.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord's claims for a Monetary Order for compensation are dismissed with leave to reapply.

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 15, 2023

Residential Tenancy Branch