



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. on March 16, 2023 concerning an application made by the landlord seeking an order of possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call.

The landlord testified that the tenant was personally served with the Notice of Dispute Resolution Proceeding and all required documents on November 17, 2022. The landlord also posted the documents to the door of the rental unit, and a photograph of that has been provided for this hearing. The landlord posted the documents and took the photograph to ensure that the tenant could not say that she didn't receive the documents.

I accept the testimony of the landlord that the tenant was personally served with the hearing package in accordance with the *Residential Tenancy Act*, and the hearing commenced in the absence of the tenant.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim for unpaid rent?

- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on January 1, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$900.00 is payable on the 1st day of each month. The landlord collected a security deposit from the tenant in the amount of \$450.00 in December, 2021 and collected a pet damage deposit in the amount of \$200.00 in January, 2022. Both deposits are still held in trust by the landlord. The rental unit is a basement suite, and the upper level of the home is also tenanted. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that on September 18, 2022 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) in person and by attaching it to the door of the rental unit with a witness. A copy of the Notice has been provided for this hearing and it is dated September 9, 2022 and contains an effective date of vacancy of September 20, 2022. The reason for issuing it states that the tenant failed to pay rent in the amount of \$450.00 that was due on August 1, 2022 and \$900.00 that was due on September 1, 2022, for a total of \$1,350.00. The tenant did not serve the landlord with an application for dispute resolution disputing the Notice, and the landlord seeks an order of possession.

The landlord also testified that the tenant has made the following rental payments:

- \$450.00 in August, 2022;
- \$0.00 in September, 2022;
- \$900.00 in October, 2022;
- \$100.00 in November, 2022;
- \$300.00 in December, 2022;
- \$500.00 in January, 2023;
- \$500.00 in February, 2023; and
- \$0.00 for March, 2023.

The tenant is currently in arrears of rent the sum of \$4,450.00. The landlord seeks to keep the security deposit and pet damage deposit and a monetary order for the balance.

Analysis

The *Residential Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities the tenant has 5 days to pay the rent in full or dispute the Notice by filing and serving the landlord with an Application for Dispute Resolution and Notice of Dispute Resolution. If the tenant fails to do either within that 5 day period, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, I accept the undisputed testimony of the landlord that the tenant has not paid the rent and has fallen further in arrears. I also accept the undisputed testimony of the landlord that the tenant has not served the landlord with a Notice of Dispute Resolution Proceeding or Application for Dispute Resolution, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy, and the landlord is entitled to an order of possession.

The *Act* also states that incorrect effective dates in a notice to end a tenancy are changed to the nearest date that complies with the law. Since the landlord served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 18, 2022 in person, the effective date of vacancy is changed to September 28, 2022. Since that date has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession which may be filed in the Supreme Court of British Columbia and enforced.

I also accept the landlord's testimony that the tenant is in arrears of rent the sum of \$4,450.00, and I order that the landlord keep the \$450.00 security deposit and \$200.00 pet damage deposit in partial satisfaction, and I find that the landlord has established a monetary claim for the difference of \$3,800.00.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$3,900.00. The tenant must be served with the order, which may be filed for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep the \$450.00 security deposit and \$200.00 pet damage deposit and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$3,900.00.

This order is final and binding and may be enforced.

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 16, 2023

Residential Tenancy Branch