



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPC, MNRL, MNDCL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Assistant to the Landlord stated that on January 07, 2023, the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in December of 2022 was sent to the Tenant at the rental unit, via registered mail. The Landlord submitted documents from Canada Post that corroborates this testimony. On the basis of this evidence and in the absence of evidence to the contrary, I find that these documents have been served to the Tenant in accordance with section 89 of the *Residential Tenancy Act (Act)*. As the documents were served to the Tenant, the hearing proceeded in the absence of the Tenant and the evidence was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

The Assistant to the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from January, February, and March of 2023. I find that it was reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Assistant to the Landlord stated that:

- this tenancy began on February 01, 2018;
- the Tenant agreed to pay monthly rent of \$970.00 by the first day of each month;
- the Tenant did not pay rent when it was due on November 01, 2022;
- the Tenant paid \$70.00 in rent for November on November 05, 2022 or November 06, 2022;
- the Tenant did not pay any rent for any period after November 30, 2022;
- the Tenant is still living in the rental unit; and
- on November 04, 2022 a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which has an effective date of November 15, 2022, was given to the Tenant's mother, who is an adult who lives in the unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$970.00 by the first day of each month, and that the Tenant has only paid \$70.00 of the rent that was due for November of 2022. As the Tenant is required to pay rent when it is due, pursuant to section 26(1) of the *Act*, I find that the Tenant owes the Landlord \$900.00 in outstanding rent from November of 2022.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. As rent has not been paid, in full,

for November of 2022, I find that the Landlord has the right to end this tenancy pursuant to section 46(1) of the *Act*.

On the basis of the undisputed evidence, I find that on November 04, 2022, the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was personally served to an adult who lives in the rental unit. I find that this document was served to the Tenant pursuant to section 88(e) of the *Act*.

Section 46 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 46(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit the effective date of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant remained in possession of the rental unit for December of 2022, January of 2023, and February of 2023, I find that the Tenant must pay rent of \$2,910.00 for those three months. I find that the Tenant must compensate the Landlord for the first 3 days in March of 2023 at a daily rate of \$31.29, which equates to \$93.87.

I am unable award compensation for the entire month of March, as it is entirely possible that the Tenant will vacate the unit today. The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for loss of revenue if the Tenant does not vacate the rental unit today.

As the Landlord has been granted an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, I find it is not necessary for me to determine if the Landlord is also entitled to an Order of Possession on the basis of a One Month Notice to End Tenancy for Cause.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective **two days after it is served upon the Tenant**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$4,097.74, which includes \$3,997.74 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$4,097.74. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims Court and 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 *Act*.

Dated: March 03, 2023

Residential Tenancy Branch