



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

On January 12, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession of the rental unit 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”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing, with Y.K. attending as an agent for the Landlord; however, the Tenant did not attend at any point during the 30-minute teleconference. All parties in attendance provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure 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 9:30 AM and monitored the teleconference until 10:00 AM. Only representatives of the Applicant 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.

Y.K. advised that the Landlord’s Notice of Hearing package and some evidence was served to the Tenant by hand on March 22, 2023; however, there was no proof of service submitted to corroborate this. He stated that the Landlord’s digital evidence was

put on a USB and served to the Tenant by registered mail on January 20, 2023, but there was no proof of service of this either. As well, he testified that the Landlord served additional evidence to the Tenant on May 4, 2023, by registered mail, and that it was received by the Tenant on May 5, 2023. Again, there was no proof of service submitted for this either.

However, based on this undisputed, solemnly affirmed testimony, I am satisfied that the Tenant has been duly served the Landlord's Notice of Hearing package with the documentary evidence in that package, as well as the additional documentary evidence served by registered mail on May 4, 2023. As such, I have accepted this documentary evidence and will consider it when rendering this Decision. However, as the Landlord did not check to see if the Tenant could view the digital evidence in accordance with Rule 3.10.5 of the Rules of Procedure, I have excluded this digital evidence and will not 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?
- Is the Landlord entitled to recover the filing fee?

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.

Y.K. provided solemnly affirmed testimony that the tenancy originally started on February 1, 2017, that rent was established at an amount of \$5,300.00 per month, and that it was due on the first day of each month. A security deposit of \$2,650.00 and a pet

damage deposit of \$2,650.00 were also paid. A copy of this tenancy agreement was submitted as documentary evidence for consideration.

A subsequent tenancy agreement was entered into evidence where the tenancy was updated on February 1, 2018. Rent was increased to an amount of \$5,400.00 per month, but there was no indication on this tenancy agreement of when rent was due each month. As well, the security deposit and pet damage deposit were both increased to \$2,700.00 each, which was paid by the Tenant.

The most current tenancy agreement was also submitted as documentary evidence for consideration. This tenancy started on February 1, 2019, where rent was reduced to an amount of \$4,000.00 per month; however, there was also no indication of when rent was due each month on this tenancy agreement. He testified that there was a verbal agreement with the Tenant that rent would be due on the first day of each month. As well, he stated that the security deposit of \$2,700.00 and the pet damage deposit of \$2,700.00 were both transferred to this new, updated tenancy.

He then solemnly affirmed that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on January 5, 2023, by hand and he referenced a proof of service form to corroborate service. He testified that \$4,000.00 was owing for rent on January 1, 2023, because the Tenant did not pay any rent for this month. Despite the tenancy agreement not indicating that rent was due on the first day of each month, he referenced the post-dated cheques submitted as documentary evidence supporting the position that the Tenant understood and agreed that rent would be due on the first day of each month. As well, when he was advised, he understood that the amount of \$4,000.00 requested on the Notice was incorrect as an excess security deposit and pet damage deposit was collected based on how much rent was currently.

He submitted that the Tenant paid \$4,000.00 on January 25, 2023, and a receipt for use and occupancy was given to the Tenant. He then stated that the Tenant paid \$4,000.00 on January 26, 2023, for February 2023 rent and a receipt for use and occupancy was given to the Tenant for this month as well. In addition, he testified that the Tenant paid \$12,000.00 on March 8, 2023, for March, April, and May 2023 rent, and a receipt for use and occupancy was also given to the Tenant for these months of rent. He referenced the documentary evidence submitted to support this position.

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 19 of the *Act* states that “A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement”, and that if the Landlord does so, “the tenant may deduct the overpayment from rent or otherwise recover the overpayment.”

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.

The undisputed evidence before me is that the Tenant was served the Notice on January 5, 2023. 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 served on January 5, 2023, the Tenant must have paid the rent in full or disputed the Notice by January 10, 2023, at the latest. While the amount of rent owing on the Notice was incorrect due to the overpayment of the security deposit and

pet damage deposit, there is no evidence before me that the Tenant either paid any amount of rent by January 10, 2023, to attempt to cancel the Notice, or dispute the Notice by this date. Given this, and the fact that there was no valid reason presented under the *Act* for the Tenant withholding the rent, I am satisfied that she breached the *Act* and jeopardized her tenancy.

While the Tenant did pay the January 2023 rent eventually on January 25, 2023, this was clearly paid outside of the time required to do so on January 10, 2023, to cancel the Notice. As a receipt for use and occupancy only was given, I am satisfied that the tenancy was not reinstated by this payment. Furthermore, as additional rent payments were made for February, March, April, and May 2023, as receipts for use and occupancy only were also given, I am also satisfied that acceptance of these payments did not reinstate the tenancy.

Based on the consistent and undisputed evidence before me, 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 on **May 31, 2023, at 1:00 PM** after service of this Order on the Tenant.

However, as the Tenant's rent has been paid in full, the Landlord will not be granted a Monetary Order. In fact, as the Landlord collected an excess security deposit in the amount of \$700.00, and an excess pet damage deposit in the amount of \$700.00, the Landlord should repay these amounts.

As the Landlord was successful in this claim, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in satisfaction of that claim.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective on **May 31, 2023, at 1:00 PM 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.

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: May 25, 2023

Residential Tenancy Branch