



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNRL, FFL

Introduction

A hearing was convened on October 28, 2022, 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, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

On October 28, 2022, a Residential Tenancy Branch Arbitrator granted the Landlord an Order of Possession and a monetary Order, in the amount of \$15,100.00. The Tenant with the initials "AV" (AV) applied for a review of this decision/Orders.

On January 10, 2023, a Residential Tenancy Branch Arbitrator granted the application for a review and ordered that a new hearing be conducted.

The hearing on May 04, 2023 was convened to consider the Landlord's application for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution. At the hearing on May 04, 2023 the Agent for the Landlord with the initials "BA" (BA) stated that an Order of Possession is no longer required, as the rental unit has been vacated.

The hearing on May 04, 2023 was adjourned for reasons outlined in my interim decision of May 4, 2023. The hearing was reconvened on September 11, 2023 and was concluded on that date.

Service of some of the documents were addressed in my interim decision of May 04, 2023 and will not be revisited here.

In my interim decision of May 04, 2023, I ordered the Landlord to re-serve AV with the Dispute Resolution Package and all evidence previously submitted to the Residential Tenancy Branch by the Landlord. At the hearing on September 11, 2023, BA stated that these documents were emailed to AV on May 09, 2023.

AV stated that he received the Dispute Resolution Package and the letter dated October 21, 2022 from the Landlord in May of 2023, although he did not have them with him during the hearing on September 11, 2023. As AV acknowledged receiving these documents, they were accepted as evidence at these proceedings.

AV stated that he did not receive a copy of the tenancy agreement, a copy of the Condition Inspection Report or a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which BA insists was sent by email on May 09, 2023. As the Landlord as failed to submit evidence to corroborate BA's testimony that these documents were served to AV, I decline to accept these documents as evidence for these proceedings.

The Tenant submitted evidence to the Residential Tenancy Branch on February 27, 2023. AV stated that this evidence was served to the Landlord, via email, although he cannot recall the date of service. BA acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

AV and BA agree that the Landlord and AV entered into a written tenancy agreement for the period between June 24, 2019 and June 24, 2020, which required the tenant to pay \$3,500.00 per month for rent/utilities.

AV and BA agree that the Landlord and AV entered into a second written tenancy agreement for the period between June 24, 2020 and June 24, 2021.

AV stated that the 2020/2021 tenancy agreement declared that rent was \$3,200.00, which included utilities. BA stated that the 2020/2021 tenancy agreement declared that rent was \$3,000.00 plus 50% of the utilities.

AV stated that the parties signed a new tenancy agreement for the period between June 24, 2021 and June 24, 2022, in which he agreed to pay monthly rent of \$3,200.00. BA stated that the parties did not sign a new tenancy agreement for the period between June 24, 2021 and June 24, 2022. BA stated that AV and the Landlord signed a note on the Condition Inspection Report, which declares that rent for this period will be \$3,000.00 per month plus \$500.00 for utilities.

AV and BA agree that the agreement declares rent is due by the 24th day of each month.

AV stated that he does not have a copy of the 2019/2020 tenancy agreement with him, but he believes it declares the tenancy continues on a month-to-month basis at the end of the fixed term. BA stated that he cannot locate a copy of this tenancy agreement and he does not recall what it declares will happen at the end of the fixed term of the tenancy.

AV and BA agree that the 2020/2021 tenancy agreement declares that the tenancy continues on a month-to-month basis at the end of the fixed term.

BA stated that SB verbally agreed that she would pay rent to the Landlord. AV stated that SB did not agree that she would pay rent to the Landlord, although in his Application for Review Consideration he appears to declare that SB was responsible for paying the rent.

BA stated that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to SB on July 13, 2022, which declared that the rental unit must be vacated by July 13, 2022. The Agent for the Landlord stated that this Notice to End Tenancy was not served to AV. AV agrees he was not served with the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

BA stated that a Writ of Possession was served to SB on October 28, 2022 and that she vacated the rental unit on November 14, 2022. AV stated that he vacated the rental unit in June of 2022 and he does not know when SB, who is his ex-wife, vacated the unit.

AV stated that sometime in May of 2022 he left a note for the Landlord, in which he informed the Landlord he would be vacating the unit on June 24, 2022. BA stated that he does not know if this letter was received by the Landlord.

BA stated that no rent was paid for the period between June 24, 2022 and November 14, 2022. Av stated that he does not know if rent was paid for this period.

Analysis

I find that the Landlord has failed to establish that the 2020/2021 tenancy agreement declared that AV must pay rent of \$3,000.00 plus 50% of the utilities. I was unable to consider the 2020/2021 tenancy agreement that was submitted in evidence by the Landlord, as I am not satisfied it was served to AV.

Without the benefit of the 2020/2021 tenancy agreement, I am unable to determine if monthly rent for that period was \$3,000.00 plus 50% of the utilities, as the Landlord contends, or \$3,200.00, as AV contends. I find this to be largely irrelevant however, as the parties subsequently altered this agreement.

I find that the Landlord has submitted insufficient evidence to conclude that AV agreed to pay \$3,500.00 in rent/utilities for the period between June 24, 2021 and June 24, 2022. I was unable to view the condition inspection report on which the parties allegedly wrote this agreement, as I am not satisfied it was served to AV. As the Landlord has failed to establish that AV agreed, in writing, to pay \$3,500.00 in monthly rent/utilities, I cannot conclude that the Landlord is entitled to compensation for monthly rent in that amount.

On the basis of the testimony of AV, I am satisfied that he agreed, in writing, to pay rent/utilities of \$3,200.00 per month for the period between June 24, 2021 and June 24, 2022. Any compensation awarded to the Landlord for unpaid rent will be based on monthly rent of \$3,200.00.

On the basis of the undisputed testimony, I find that rent was due by the 24th day of each month.

As there is no evidence that the parties had a fixed term tenancy agreement that required the Tenant to vacate the unit at the end of the fixed term, I find that this tenancy continued on a month-to-month basis after the end of the fixed term.

On the basis of the BA's testimony, I find that SB entered into an oral tenancy agreement with the Landlord and, as such, was also responsible for paying rent. I find that BA's testimony in this regard is more reliable than AV's testimony that SB did not have an oral tenancy agreement with the Landlord, as AV asserts in the Application for Review Consideration that SB was responsible for paying the rent.

On the basis of the undisputed evidence, I find that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to SB on July 13, 2022, which ended the tenancy, pursuant to section 46 of the *Act*. Pursuant to section 53 of the *Act*, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ended the tenancy on July 23, 2022, which is ten days after the Notice was received by SB.

As the rental unit was not vacated on July 23, 2022, I find that the Tenants are obligated to pay "overholding" rent, on a per diem basis, for the days rental unit remained occupied. As SB and AV were co-tenants, they were jointly liable for any costs associated to the tenancy. As AV is a party to the tenancy agreement, I find that he is obligated to pay "overholding" rent even if he did not remain in the rental unit.

On the basis of the undisputed testimony, I find that SB remained in possession of the rental unit until November 14, 2022. I therefore find that SB and AV are obligated to pay overholding rent until November 14, 2022.

Even if I accepted AV's testimony that he gave the Landlord written notice of his intent to end the tenancy on June 24, 2022, the Tenants would remain obligated to pay overholding rent until November 14, 2022, as SB remained in possession of the unit.

On the basis of the undisputed testimony, I find that no rent was paid for the period between June 24, 2022 and November 14, 2022. I therefore find that the Tenants must pay overholding rent in the following amounts:

- June 24, 2022 to July 23, 2022 - \$3,200.00
- July 24, 2022 to August 23, 2022 - \$3,200.00
- August 24, 2022 to September 23, 2022 - \$3,200.00
- September 24, 2022 to October 23, 2022 - \$3,200.00
- October 24, 2022 to November 14, 2022 - \$2,240.07 (21 days X \$106.67)

TOTAL - \$15,040.07

BA and AV agree that the Tenants' security deposit of \$1,700.00 may be applied to any rent due to the Landlord. I therefore find that the Tenants must pay the Landlord \$13,340.07 in overholding rent.

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

Conclusion

As the rental unit has been vacated and the Landlord no longer requires an Order of Possession, I find it is not necessary for me to either uphold or set aside the Order of Possession granted on October 28, 2022.

The Landlord has established a monetary claim, in the amount of \$13,440.07 which includes \$13,340.07 in 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 the \$13,440.07. As this is a different amount than the monetary Order dated October 28, 2022, I set aside the original Order and replace it with this one. In the event the Tenants do not comply with this Order, it may be served on the Tenants, 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: September 11, 2023

Residential Tenancy Branch