



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act) and/or the tenancy agreement, for an Order setting conditions on the Landlord's right to enter the rental unit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession on the basis of a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

WY stated that on June 03, 2024 the Tenant's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on June 03, 2024 was sent to the Landlord, via registered mail. ST acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

ST stated that on June 08, 2024 the Landlord's Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on June 06, 2024 was personally served to the Tenant. WY acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

The Landlord submitted additional evidence to the Residential Tenancy Branch on various dates. ST stated that this evidence was personally served to the Tenant on various dates. WY stated that he only received one package of evidence from the Landlord.

As it is unclear precisely what evidence was served to the Tenant by the Landlord, the Landlord was advised that the Landlord must introduce any documents the Landlord wishes to rely upon at the hearing, at which time I will confirm that the Tenant has received that document. Only documents the Tenant acknowledged receiving have been considered 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.

Preliminary Matter #1

As the parties agree that the rental unit has been vacated, I will not be determining whether the Landlord is entitled to an Order of Possession; I will not be determining whether to issue an Order requiring the Landlord to comply with the Act and/or tenancy agreement; and I determining whether there is a need to issue an Order setting conditions on the Landlord's right to enter the rental unit. At the hearing, the parties agreed these matters can be withdrawn.

Preliminary Matter #2

An interpreter was present at the hearing, at the request of the Tenant. WY participated in the hearing with the assistance of the interpreter.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Is the Tenant entitled to recover the fee paid to file this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that:

- The tenancy began in May of 2021
- The Tenant agreed to pay monthly rent of \$1,150.00
- The Tenant paid rent for May and June of 2021

- A Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was personally served to the Tenant on May 30, 2024, which declared the unit must be vacated by June 10, 2024
- The Tenant gave the Landlord an I.O.U, dated April 24, 2024, which declares the Tenant owes rent of \$27,950.00 for the period between April 22, 2021 and April 30, 2024.

WY stated the unit was vacated on June 25, 2024. ST stated it was vacated “two days ago”, which is June 26, 2024.

WY stated that:

- WY has a brain injury, which makes it difficult to remember details
- WY is certain WY paid rent for May, June, and July of 2021
- WY paid a security deposit of \$575.00
- WY is not certain if WY paid rent for August of 2021
- WY paid \$10,000.00, in cash, for overdue rent, although WY does not recall when it was paid
- WY has paid no other rent during this tenancy
- WY withheld went for various deficiencies with the unit
- WY had no legal authority to withhold rent.

ST stated that:

- The Tenant paid rent for May and June of 2021
- The Tenant did not pay rent for July and August of 2021
- The Tenant paid a security deposit of \$1,150.00
- On June 30, 2022, the Tenant paid \$10,000.00, in cash, which was applied to overdue rent
- The Tenant has paid no other rent during this tenancy.

Analysis

On the basis of the undisputed evidence, I find that the Tenant was required to pay monthly rent of \$1,150.00, and that the Tenant did pay rent for May and June of 2021.

On the basis of the testimony of the Tenant, I find that the Tenant vacated the rental unit was occupied until at least June 25, 2024. I therefore find that the Tenant is obligated to pay rent for the period between June 01, 2024 to June 25, 2024. Although the Landlord alleges it was occupied until June 26, 2024, I there is no evidence to

corroborate that submission and I am unable to conclude that the Tenant owes rent for June 26, 2024.

I find the Landlord has submitted insufficient evidence to establish that rent was not paid for July of 2021. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that refutes the Tenant's testimony that WY is certain rent was paid for July of 2021. I am unable to conclude that rent is owed from July of 2021.

On the basis of ST's testimony, I find that the Tenant did not pay rent for August of 2021. I find this testimony is simply more reliable than WY's testimony that WY does not recall if rent was paid for August of 2021.

On the basis of the undisputed testimony I find that the Tenant made a cash payment of \$10,000.00, which was applied to overdue rent. As the Tenant does not recall when this payment was made, I accept ST's testimony that it was paid on June 30, 2022.

On the basis of the undisputed testimony I find that the Tenant did not pay rent for any period after August of 2021, with the exception of the aforementioned \$10,000.00 payment.

For these reasons I find the Tenant owes rent as follows:

- August of 2021 to December of 2021 – 5 months X \$1,150.00 = \$5,750.00
- January of 2022 to December of 2022 – 12 months X \$1,150.00 = \$13,800.00
- January of 2023 to December of 2023 – 12 months X \$1,150.00 = \$13,800.00
- January of 2024 to May of 2024 - 5 months X \$1,150.00 = \$5,750.00
- June 01, 2024 to June 25, 2024 - 26 days X per diem rent of \$38.33 = \$996.58
- Less cash payment of \$10,000.00

Total - \$30,096.58

I find the I.O.U. created by the Tenant, which declares the Tenant owes rent of \$27,950.00 for the period ending April 30, 2024, is consistent with the above calculations. I therefore find this I.O.U. supports my conclusion that rent was not paid for August of 2021, as the Landlord asserts.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of the rent. No evidence was presented to establish that the Tenant had a legal right to withhold rent. I specifically note that the Tenant does not have a right to withhold rent even if there are deficiencies with the rental unit.

As the Tenant was advised at the hearing, the Tenant has the right to file an Application for Dispute Resolution seeking compensation for deficiencies with the rental unit.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As rent was clearly overdue when the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served on May 30, 2024 and the Tenant has not paid the outstanding rent, I find that the Landlord had the right to serve the Tenant with the Notice, pursuant to section 46(1) of the *Act*.

Section 46(4)(a) of the *Act* stipulates that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, in which case the notice has no effect. As the Tenant has not paid the overdue rent, I find that this Ten Day Notice to End Tenancy for Unpaid Rent or Utilities remains in full force and effect. I therefore dismiss the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 30, 2024.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. This is not necessary in these circumstances, as the parties agree the unit has been vacated.

Section 55(1.1) of the *Act* stipulates that if tenant makes an application for dispute resolution to dispute a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, the director must grant to the landlord an order requiring the payment of the unpaid rent if the landlord's notice to end tenancy complies with section 52 of the *Act* and the director,

during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As the application to set aside the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities has been dismissed and the Notice to End Tenancy complies with section 52 of the *Act*, I grant the Landlord an monetary Order, pursuant to section 55(1.1) of the *Act*, for unpaid rent from October of 2021, in the amount of \$30,096.58.

The Tenant has failed to establish the merit of the Tenant's Application for Dispute Resolution. I therefore dismiss the Tenant's application to recover the fee for filing the Application for Dispute Resolution.

Conclusion

I grant the Landlord a Monetary Order in the amount of \$30,096.58 for unpaid rent.

The Landlord must serve this Monetary Order to the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced in the Small Claims Court of British Columbia if equal to or less than \$35,000.00. Monetary Orders that are more than \$35,000.00 must be filed and enforced in 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 *Act*.

Dated: June 29, 2024

Residential Tenancy Branch