



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on September 11, 2020 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of a September 18, 2020 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s Application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s Application to a participatory hearing as they were not satisfied with the completion of the tenancy agreement, or the evidence showing service of the end-of-tenancy notice.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on November 9, 2020. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord gave the tenants notice of this dispute resolution hearing by registered mail. This mail included the prepared evidence of the landlord. The landlord submitted a copy of the Canada Post receipt dated September 22, 2020 that shows the tracking number as proof of delivery.

The tenants had proper notice of this participatory hearing and did not attend or provide documentary evidence in advance.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of the Residential Tenancy Agreement. This shows the start of tenancy date was December 1, 2019. The rent was \$1050.00 per month payable on the first of each month. A security deposit amount of \$525 was paid on December 1, 2019. Two tenants are named on the agreement; the landlord named the property management company. The landlord's agent in attendance spoke to this in the hearing. They were the individual who signed the tenancy agreement with one tenant on November 15, 2019, as well as the second tenant on April 20, 2020.

The landlord applied for an order of possession pursuant to the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") they issued to the tenants on September 2, 2020. This was for the unpaid rent amount for September -- \$1050 -- that was due on September 1, 2020. The landlord stated a witness was present when they placed this document in the mail slot of the rental unit on September 2, 2020. The landlord completed a 'Proof of Service' document (not submitted) bearing the witness signature. The landlord also provided a photo that they took at the time of service on September 2, 2020. The printed copy of the photo bears the landlord's and witness' signature to state they delivered the document on September 2, 2020 at 4:52 pm.

The landlord also applied for a monetary order for \$1050. The landlord's 'Direct Request Worksheet' shows this amount. In the hearing, the landlord amended the

claimed amount to include October - November 2020 and stated that one of the tenants was seen by other building residents to be occupying the rental unit. This brings the total claimed amount to \$3,150.

The tenants did not attend the hearing and provided no documentary evidence in this matter.

Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and the conditions of how it was started with the tenants, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. The property manager present was the individual who signed the agreement with both tenants on separate dates. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the agreement shows the amount of rent and payment period clearly stated.

Section 46 of the *Act* states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 46(5) says 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.

Based on the undisputed submissions by the landlord, I find they gave the 10 Day Notice to the tenants on September 2, 2020. The tenants failed to pay the rent owing within the five days granted under section 46(4) of the *Act*. There is no evidence before me that they disputed the 10 Day Notice within the five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 12, 2020. In the hearing, the landlord stated that one of the

tenants was still visiting the rental unit periodically, and there is no evidence to the contrary.

The evidence of the landlord on the monetary claim is not disputed; therefore, I find that the tenants are obligated to pay \$3,150, as per the tenancy agreement.

Conclusion

I grant an Order of Possession to the landlord effective **two days 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.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3,250, for rent owed from September to November 2020, and recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible.

Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: November 9, 2020

Residential Tenancy Branch