



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON GROUP WEST COAST
REALTY 120 and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for an Order of Possession and monetary compensation based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on February 16, 2021 (the "Notice"). The Landlord originally applied by way of the Direct Request proceeding pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"). The Adjudicator considering the request adjourned the Landlord's Application to a participatory hearing as there were discrepancies with the parties' names and the address on the application as opposed to the tenancy agreement.

The participatory hearing was scheduled for teleconference before me at 9:30 a.m. on this date. Only the Landlord's Property Manager, J.T., called into the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:19 a.m. Additionally, 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 the Property Manager and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Property Manager testified that he personally served the Tenant with the Notice of Hearing and the Application on March 1, 2021. I accept the Property Manager's testimony and find the Tenant was duly served as of March 1, 2021 and I proceeded with the hearing in their absence.

The Property Manager was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. He confirmed his understanding of this requirement and further confirmed he was not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Property Manager and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Amendments to Application

Hearings before the Residential Tenancy Branch are conducted in accordance with the *Residential Tenancy Branch Rules of Procedure*. *Rule 4.2* of the *Rules* allows me to amend an Application for Dispute Resolution in circumstances where the amendment might reasonably have been anticipated. The authority to amend is also provided for in section 64(3)(c) of the *Act* which allows an Arbitrator to amend an Application for Dispute Resolution.

As previously noted, the Adjudicator adjourned the Landlord's original Application due to inconsistencies between the Application for Dispute Resolution and the tenancy agreement. During the hearing before me the Property Manager was provided an opportunity to clarify and correct those discrepancies. To this end he testified that he named the property owners as Landlord on his original Application. The name of the Landlord on the tenancy agreement was the property management company who in turn employed the Property Manager. The Property Manager further confirmed that he spelled the Tenant's name wrong in that he missed one letter in her surname. Finally, the Property Manager confirmed that the address of the rental unit as noted on the tenancy agreement was incorrect, and that the address on the Landlord's Application was correct.

I find that these amendments would have been reasonably anticipated by the Tenant and I therefore amend the Landlord's Application accordingly.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession and monetary compensation from the Tenant based on the Notice?
2. Should the Landlord recover the filing fee?

Background and Evidence

A copy of the residential tenancy agreement was provided in evidence and confirmed the following with respect to this tenancy: the tenancy began September 1, 2020; monthly rent was payable in the amount of \$1,800.00; and the Tenant paid a security deposit in the amount of \$900.00.

The Property Manager testified that the last time the Tenant paid rent was December 2020 at which time she paid only \$800.00. The Tenant then failed to pay rent for January 2021 and February 2021 following which the Landlord issued the Notice. The Property Manager testified that the Notice was posted to the rental unit door on February 16, 2021. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of February 19, 2021.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, February 24, 2021. The Notice also explained the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. The Property Manager confirmed that the Tenant failed to pay the outstanding rent and failed to apply to dispute the Notice. He also testified that at the time of the hearing the sum of \$15,400.00 was outstanding for rent as follows:

| | |
|---------------|------------|
| December 2020 | \$1,000.00 |
| January 2021 | \$1,800.00 |
| February 2021 | \$1,800.00 |
| March 2021 | \$1,800.00 |
| April 2021 | \$1,800.00 |
| May 2021 | \$1,800.00 |
| June 2021 | \$1,800.00 |
| July 2021 | \$1,800.00 |

| | |
|--------------|--------------------|
| August 2021 | \$1,800.00 |
| TOTAL | \$15,400.00 |

Analysis

Based on the above, the Property Manager's undisputed testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find that the Tenant had no such authority to withhold rent.

I therefore find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order must be served on the Tenant and may be filed in the B.C. Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of \$15,500.00 comprised of outstanding rent from December 2020 to August 2021 and the \$100.00 fee paid by the Landlord for this application. I therefore grant the Landlord a Monetary Order under section 67 for this amount. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I also grant the Landlord liberty to reapply for further monetary compensation for any future loss of rent or cleaning and repair costs or other losses associated with this tenancy as the case may be.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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*.

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: August 26, 2021

Residential Tenancy Branch