



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing convened as a result of a landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice/10 Day Notice) issued to the tenant;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

The listed landlord/applicant, legal counsel (counsel) for the applicant, and the tenant attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The tenant confirmed receipt of the landlord's application.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Request for adjournment

At the outset of the hearing, the tenant requested an adjournment of the hearing due to medical issues. I note that the tenant confirmed receiving the landlord's application by registered mail and the Canada Post tracking history shows the notice card was delivered to the tenant on November 18, 2022, and that the tenant collected the registered mail on November 23, 2022. The tenant did not submit documentary evidence or written submissions prior to the hearing to support that they had a medical issue from November 23, 2022 through March 10, 2023, which prevented them from filing evidence.

In considering whether or not to grant the tenant's request for an adjournment, Rule 7.8 of the Rules gives the Arbitrator authority to adjourn the dispute resolution proceeding to a later time at the request of either party or of the Arbitrator's own initiative.

Under Rule 7.9 I considered whether there would a possible prejudice to each party. I find that to grant the request for an adjournment would unduly prejudice the rights of the landlord who has asserted that they have not received the monthly rent from the tenant since April 2021. In light of the fact the tenant confirmed receiving the Notice and not filing an application in dispute of the Notice, I therefore find it procedurally unfair to the landlord to further delay the proceedings for these reasons.

Named parties –

Under the Act, a landlord includes the heirs, assigns, personal representatives and successors in title. I therefore find it appropriate to include on the cover page of this Decision that the applicant has been appointed as administrator of the estate of the deceased landlord/owner, JAL.

Issue(s) to be Decided

Was there a tenancy established between the deceased landlord and the tenant?

If so, is the landlord/administrator entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and to recover the cost of the filing fee?

Background and Evidence

There is no written tenancy agreement associated with this tenancy. The tenant questioned whether this was a true tenancy as she claimed to have a rent-to-own agreement with the deceased landlord.

Counsel submitted documents suggesting that the deceased landlord lacked the mental capacity to enter into such a contract.

The applicant said the tenant was obligated to pay \$500 in monthly rent.

The tenant submitted that she has been living in the rental unit for 7 ½ years, or from June 2015.

The landlord writes in their application, the following:

(tenant) has been residing at the property which was owned by (landlord) for which she paid \$500 per month. Following the death of (landlord) his brother his executor until his own death on March 23, 2022. (applicant) has now been appointed to be the administrator of the Estate which has not received and rent payments since at least the death of (landlord's brother) on March 23, 2022. As of the end of September, this consists of 18 months which amounts to \$9000 owing.

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Counsel submitted that the tenant was served with the Notice on September 27, 2022, by registered mail. The tenant confirmed receipt of the Notice, at first, and then later in the hearing, they said it was served by a server.

The Notice was dated September 27, 2022, listing unpaid rent of \$9,000 owed as of September 1, 2022. The effective vacancy date listed on the Notice was October 12, 2022. Filed in evidence was a copy of the Notice and proof of service.

Counsel stated that the tenant has not vacated the rental unit and did not pay the amount listed on the Notice within 5 days, or at all. In addition, the tenant has not paid

any rent since being issued the 10 Day Notice, according to the landlord's evidence and submissions. Counsel said that as of the date of the hearing, the tenant now owes an additional \$3,000, in unpaid monthly rent, accounting for the lack of payments since the Notice was issued, for a total of \$12,000 in unpaid monthly rent, through March 2023.

Additional evidence filed included a tenant ledger sheet, a Supreme Court of British Columbia order appointing the applicant as administrator during probate for the estate of the deceased landlord, an email letter from the tenant to counsel's office, dated October 11, 2022, a letter from a relative of the deceased landlord, notes from the deceased landlord's executor, and a realtor's letter.

The October 11 letter sent by the tenant to counsel is reproduced in part, as follows:

At this time I am not willing to continue paying the rent for the property as mentioned above. This in fact, is due to my rights as a tenant/resident being violated by such agent, not only entering the property without permission, nor leaving when i requested, but making snide remarks thru intimidation and threats. Due to my medical condition, this has caused me extreme mental diress. I have been forced to hire a separate persons to monitor the home and property on a regular basis.

I also want to touch on the fact of the property being listed. The question I have is why is this in effect when I have not once been contacted by your office in regards to honoring, or at the very least discussing, my original rent to own agreement with ☐?

Please note that this present months rent amount, October, will in fact be used towards emptying the properties septic tank. This, as you know, is mandatory to keeping the septic system running efficiently.

I have been dealing with a family medical emergency in Alberta, hence have not yet forwarded copies of rent receipts over the last 7 years. I will be tending to this asap.

[Reproduced as written except for anonymizing personal information to protect privacy]

Tenant's response

The tenant said they have been living in the rental unit for 7 ½ years, for a set rent of \$500 per month. The tenant said that they stopped paying rent in March 2022 due to repairs that she made. The tenant said that if her payments were for rent, she never would have paid such significant expenses. The tenant said that she stopped paying rent due to the well not working and due to mould in the home.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Establishment of a tenancy agreement

The Act defines a “**tenancy agreement**” as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 91 of the Act stipulates that except as modified or varied under this Act, the common law respecting landlords and tenants applies in British Columbia. Common law has established that oral contracts and/or agreements are enforceable.

Tenancy Policy Guideline 9 assists in determining whether a tenancy was established, providing the following:

B. TENANCY AGREEMENTS

Under a tenancy agreement, the tenant has exclusive possession of the site or rental unit for a term, which may be on a monthly or other periodic basis. Unless there are circumstances that suggest otherwise, there is a presumption that a tenancy has been created if:

- the tenant gains exclusive possession of the rental unit or site, subject to the landlord’s right to access the site, for a term; and
- the tenant pays a fixed amount for rent.

In this case, the tenant referred to her payments as rent multiple times in her written statement to counsel’s office. The tenant also referred to herself as a tenant and alluded to the fact she had exclusive possession of the rental unit.

In addition, as the tenant provided no documentary evidence, I find the tenant submitted insufficient evidence that she had a rent-to-own agreement with the deceased landlord.

Based on the above, I find that the deceased landlord and the tenant entered into a tenancy agreement for a monthly rent of \$500 and that the terms of this verbal tenancy agreement are recognized and enforceable under the *Residential Tenancy Act*.

Order of Possession-

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as here.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution. I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the 10 Day Notice, owed the rent listed, did not pay the outstanding rent, or file an application for dispute resolution in dispute of the Notice within five days of service.

The tenant confirmed stopping the rent payments of her own accord without legal authority to do so.

I find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the first 10 Day Notice, or October 12, 2022.

As a result, I order the tenancy ended on October 12, 2022, and I grant the landlord an order of possession of the rental unit pursuant to section 55(2) of the Act, effective **two days** after service of the order upon the tenant.

Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

The tenant is informed that costs of such enforcement, **such as bailiff fees and court costs**, are subject to recovery from the tenant.

Monetary claim-

I find it reasonable that the landlord be allowed to amend their original monetary claim in their application, to account for further unpaid rent as the tenant has yet to vacate the rental unit.

I find that the landlord submitted sufficient evidence to prove that the tenant owes a total amount of unpaid rent of **\$12,000**. Although the tenant said they stopped paying the monthly rent in March 2022, the tenant submitted no evidence of rent payments through that date, or at all.

As a result, I find the landlord has established a monetary claim of **\$12,000**, for the outstanding unpaid monthly rent through March 2023, as noted above.

I grant the landlord recovery of their filing fee of **\$100**, due to their successful application.

I find the landlord has established a total monetary claim of **\$12,100**, for the unpaid monthly rent and the filing fee, as noted above.

I grant the landlord a **monetary order** for the balance due, pursuant to section 67 of the Act in the amount of **\$12,100**.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is **cautioned** that costs of such enforcement are subject to recovery from the tenants.

Conclusion

The landlord's application for an order of possession of the rental unit and a monetary order for unpaid rent and the filing fee has been granted in the above terms.

I ordered the tenancy ended on October 12, 2022.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 10, 2023

Residential Tenancy Branch