Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord finalized their Application for Dispute Resolution by Direct Request (the "Application") on May 9, 2023 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 their Application.

This participatory hearing was convened after the issuance of the June 12, 2023 Interim Decision of an adjudicator at the Residential Tenancy Branch. 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 details of the end-of-tenancy notice that appeared in the Landlord's evidence, and its service to the Tenant.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on August 14, 2023. In the conference call hearing, I explained the process and provided the attending party, the Landlord, the opportunity to ask questions.

Preliminary Matter – Landlord's service of Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Notice of Dispute Resolution Proceeding for this hearing. This means the Landlord must provide proof that they served that document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Landlord's evidence shows that they served this Notice to the Tenant using registered mail, sent on June 15, 2023, after they received the previous Adjudicator's decision. The image of the postal receipt in the Landlord's evidence shows the registered mail tracking number. In the hearing, the Landlord provided that the address used was that of the rental unit where the Tenant resides.

Based on the submissions of the Landlord, as well as the evidence of their registered mail, I find they served the Notice of Dispute Resolution Proceeding in a manner complying with s. 89(1)(c) of the *Act*. The hearing thus proceeded in the Tenant's absence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord submitted a copy of the Residential Tenancy Agreement, and a separate page showing the Tenant's signature for that document. This shows the start of tenancy date was June 1, 2022. The rent was $2,600 per month payable on the first of each month.

Though the agreement sets out two deposits paid by the Tenant, the Landlord stated that in reality they received only $150 from the Tenant as a deposit. They were waiting for the remainder from the Tenant; however, "that never happened."

The Landlord provided a copy of the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") they signed on April 9, 2023. This provided for the end-of-tenancy date of April 19, 2023. The Landlord served this document in person to the Tenant.

The Landlord's family member witnessed that transaction, as the Landlord described in the hearing.

Page 2 of the 10-Day Notice shows the reason the Landlord was ending the tenancy: this is unpaid rent in the amount of $4,750. The Landlord stated this was the balanced owed by the Tenant as of April 1, 2023.

After this, the Landlord received a $1,000 payment from the Tenant in June. The Tenant's acquaintance moved back in to the rental unit, and then gave the Landlord $1,750 on August 5, 2023.

Aside from these payments, the Landlord received no other rent from the Tenant, through to the calendar month of this hearing, *i.e.*, August 2023. The total amount of rent owing, as of the date of the hearing, was $11,200.

The Landlord stated they received no notice from the Tenant that they were disputing the 10-Day Notice issued by the Landlord on April 9, 2023.

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 Tenant, I am satisfied that the agreement existed between the Landlord and this Tenant knew the terms and conditions therein. Most importantly I find the Tenant was aware of the rent payment date at all times. Based on the testimony of the Landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount of $2,600.

The Act s. 46 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 a tenant receives the notice.

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

With s. 46(5), 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), that

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 provided the 10-Day Notice by a proper means of service to the Tenant. The Tenant then failed to pay the rent owing by April 14, 2023; that was within five days after the Landlord served the 10-Day Notice in person on April 9, 2023. There is no evidence before me that the Tenant disputed the 10-Day Notice within the five-day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, April 19, 2023. In line with this, I grant the Landlord an Order of Possession.

As well, I provide the Landlord with a Monetary Order for the outstanding rent amount owing, as of the date of this hearing. That amount is $11,200. The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The landlord has established a claim of $11,200. After setting off the security deposit amount of $150, there is a balance of $11,050. I am authorizing the Landlord to keep the security deposit amount and award the balance of $11,050 as compensation for the rent amounts owing.

Because the Landlord was successful in their Application, I grant the $100 Application filing fee award to them.

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 s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of $11,150. 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 s. 9.1(1) of the *Act*.

Dated: August 14, 2023

Residential Tenancy Branch