



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. on August 31, 2023 concerning an application made by the landlord seeking an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony, and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord testified that the tenant was served with the Notice of Dispute Resolution Proceeding on June 23, 2023 by registered mail, and has provided a Canada Post tracking document confirming that testimony, and indicating that the package was returned to sender on July 14, 2023. The *Residential Tenancy Act* specifies that documents served by registered mail are deemed to have been served 5 days later, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

The tenant has not provided any evidence, and all evidence of the landlord has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2006 and the tenant still resides in the rental unit. The tenancy agreement, a copy of which has been provided for this hearing specifies rent in the amount of \$216.00 payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$195.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a bachelor suite apartment.

The tenancy agreement provided by the landlord is not signed by a landlord or by a tenant, and the landlord's agent testified that it was dealt with by a previous agent of the landlord who passed away in 2019, and the landlord does not know why it is not signed and recently discovered that it is not signed.

The landlord further testified that at the beginning of the tenancy, the landlord was a society, however funding from BC Housing was pulled and the subsidized rental amount changed from "rent geared to income" to "low end of market." Therefore, effective September 1, 2023 rent increased to \$469.00 per month. The tenant is "grandfathered" and was given a letter stating that every September rent would be increased. From 2007, after 1 year of the tenancy, rent would increase depending on what was allowed on June 1. An annual review from September, 2010 to August, 2014, rent was increased a flat rate of \$320.00. However when the tenant reached age 65, it was adjusted in 2016. Every year from then on, rent increases effective on September 1. Three month's notice was given to the tenant.

The tenant is in arrears of rent the sum of \$3,144.00, for March to May, 2023 and rent for June, 2023 went to \$1,728.44. The tenant's sister provided rent to the landlord on behalf of the tenant until March, 2023, and \$147.56 in advance in September, 2022, leaving a balance outstanding for March, 2023 in the amount of \$321.44. No rent was paid for April or May, 2023, leaving a balance of \$1,259.44 in addition to \$1,728.44 for June, 2023.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by attaching it to the door of the rental unit on June 2, 2023, a copy of which has been provided for this hearing. It is dated June 2, 2023 and contains an effective date of vacancy of June 15, 2023. The reason for issuing it states that the tenant failed to pay rent in the amount of \$1,728.44 that was due on June 1, 2023.

The tenant has not served the landlord with an Application for Dispute Resolution or a Notice of Dispute Resolution Proceeding disputing the Notice. The landlord tried to

reach out and negotiate how rent would be paid, but no one answers the phone, it just rings.

Based on the email from the accounting department, a copy of which has been provided for this hearing, from the remaining amount received from the tenant's sister, the amount of \$321.44 as of March, 2023, the tenant owes that amount and \$469.00 for the next 3 months. The landlord has also provided a copy of a notice dated June 1, 2023 from the landlord to the tenant stating that as of June 1, the total amount payable to the landlord is \$1,728.44: March 2023 Rent balance \$321.44; April 2023 rent \$469.00; May 2023 \$469.00 and June 2023 \$469.00.

Analysis

Firstly, the *Residential Tenancy Act* specifies that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the Notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I accept the undisputed testimony of the landlord that the Notice was served by attaching it to the door of the rental unit on June 2, 2023, which is deemed to have been served 3 days later, or June 5, 2023. The landlord testified that the landlord has not been served with an application or a Notice of Dispute Resolution Proceeding, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an order of possession. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant. The tenant must be served with the order of possession, which may be filed for enforcement in the Supreme Court of British Columbia.

With respect to the monetary claim, I have reviewed all of the landlord's evidence, and I accept that the unsigned tenancy agreement was entered into by the then landlord and the tenant. The original rental amount in the tenancy agreement was \$216.00. The landlord testified that rent was increased and has provided a letter addressed to the tenant dated June 2, 2023, showing that the balance of rent of \$321.44 for March, 2023 has not been received by the landlord, or \$469.00 each month for the months of April, May and June, 2023. There is absolutely no evidence to support that the rental amount was increased in accordance with the law. I accept that rent was calculated as "rent geared to Income" at the beginning of the tenancy, and I accept that the funding was pulled, but there is no evidence to substantiate that the tenant was aware of the

increase or the change in subsidy, only that the landlord claims that the tenant failed to pay certain amounts of rent. Therefore, I find that the landlord has established unpaid rent in the amount of \$216.00 per month from April 2023 to September 2023, totalling \$1,296.00. Any notice that the tenant could give to end the tenancy would not take effect any earlier than September 30, 2023 and I find that the landlord is entitled to rent for September..

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the landlord as against the tenant in the amount of \$1,396.00. The tenant must be served with the order, which may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

I order the parties to deal with the security deposit in accordance with the law.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,396.00.

I order the parties to deal with the security deposit in accordance with the law.

This order is final and binding and may be enforced.

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: September 01, 2023

Residential Tenancy Branch