



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an order of possession and a monetary order for unpaid rent or utilities, an order permitting the landlord to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord and the tenant attended the hearing and the tenant was accompanied by an Advocate. The landlord and the tenant each gave affirmed testimony and the parties were given the opportunity to question each other and to give submissions.

The tenant has not provided any evidentiary material, and the parties agree that the landlord provided the tenant with the landlord's evidence with the Notice of Dispute Resolution Hearing package by registered mail on August 25, 2023. Therefore, all evidence of the landlord has been reviewed and the evidence I find relevant to the application 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 *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit or pet damage deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on February 1, 2023 and does not know whether or not the tenant still resides in the rental unit. Rent in the amount of \$1,850.00 is 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 \$925.00 as well as a pet damage deposit in the amount of \$925.00, both of which are still held in trust by the landlord. The rental unit is one of two lower level suites within a house and the other lower level and the upper level are also tenanted. Neither the landlord nor the landlord's agent reside on the property. There is no written tenancy agreement.

On August 8, 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. A copy has been provided for this hearing and it is dated August 8, 2023 and contains an effective date of vacancy of August 18, 2023 for unpaid rent in the amount of \$1,850.00 that was due on August 1, 2023. It is addressed to the tenant (TD).

On August 24, 2023 the landlord served a "Revised" 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by attaching it to the door of the rental unit. A copy of the first of 3 pages has been provided for this hearing, and it is dated August 8, 2023 and contains an effective date of vacancy of August 18, 2023. It is addressed to the tenant (S(TD)B-K). The reason for issuing it belongs on page 2, which has not been provided.

The tenant had served the landlord with a Notice of Dispute Resolution Proceeding, which is how the landlord obtained the tenant's real name.

The tenant testified that the tenant moved out on September 27, 2023 but didn't officially tell the landlord. The tenant is in a treatment facility that doesn't allow phone calls.

The tenant's mother spoke with the landlord and advised that she had COVID and would be back in a week to return the keys once the tenant's mother had removed all of the tenant's belongings.

The tenant was afraid to communicate due to a lot of scary interactions and got out as quickly as she could. The tenant's mental health was in question, and the tenant has called police multiple times due to the landlord entering the tenant's suite. The tenant was genuinely afraid. The landlord's brother told the tenant that if the tenant was not careful, something would happen to the tenant, and there were multiple similar

incidents. The landlord wanted to drive the tenant out because the tenant made an application through the Residential Tenancy Branch for an order that the landlord make emergency repairs and reported tax issues to the CRA.

The tenant agrees that rent wasn't paid and the tenant was very fearful in the suite, and still fearful during her recovery.

The tenant received the first 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, but not a revised one, except in the landlord's hearing package with the evidence.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act* or the tenancy agreement. If the tenant fails to do so, the landlord may serve a notice to end the tenancy for the unpaid rent.

The tenant does not dispute that rent for August, 2023 was not paid, and testified that she left the rental unit on September 27, 2023, but still occupies the rental unit. Therefore, I find that the landlord is entitled to recover 3 months' rent, or \$5,550.00.

The tenant disagrees that a "Revised" 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was on the door, but agrees that the first one was served on the door. The landlord has only provided the first of 3 pages of the Revised Notice and has not provided a Proof of Service Document.

The *Residential Tenancy Act* states that in order to be effective, a landlord's notice to end a tenancy must be in writing, must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy and be in the approved form. I am not satisfied that the Revised 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was served or in the approved form.

The *Act* does not preclude a landlord from issuing such a notice in another name of the tenant. I find that the first Notice is in the approved form and contains information required by the *Act*. The tenant did not pay the rent and did not dispute the Notice and 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 in the Supreme Court of British Columbia for enforcement.

Having found that the tenant owes \$5,550.00 for rent for August, September and October 2023, I order the landlord to keep the \$925.00 security deposit in partial satisfaction.

Since the landlord has been 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 for the difference of \$4,725.00 (\$1,850.00 x 3 + \$100.00 - \$925.00 security deposit = \$4,725.00).

A landlord may only apply to keep a pet damage deposit for damages caused by a pet.

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 order the landlord to keep the \$925.00 security deposit and I 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 \$4,725.00.

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: October 13, 2023

Corrected: October 14, 2023

Residential Tenancy Branch