



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution in which the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act) or the tenancy agreement; and to recover the fee for filing the Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

CG stated that on May 26, 2024, the Tenant's Dispute Resolution Package was sent to the Landlord, via text message. SJ acknowledged receipt of these documents. As the Landlord acknowledged receipt of these documents, I find they were sufficiently served pursuant to section 71 of the Act.

SJ stated that the Landlord's Dispute Resolution Package was personally served to the Tenant with the initials SK on May 23, 2024. CG agreed that these documents were received by SK, who subsequently showed them to her. CG stated that they are representing SK at these proceedings.

On the basis of the undisputed testimony, I find that SK was personally served with hearing documents, in accordance with section 89 of the Act. The hearing therefore proceeded in the absence of SK.

As CG acknowledged receipt of the Landlord's hearing documents, I find they were sufficiently served pursuant to section 71 of the Act.

In May and June of 2024, the Tenant submitted evidence to the Residential Tenancy Branch. CG stated that this evidence was served to the Landlord, by email, on June 05, 2024. The Tenant submitted no proof evidence was served with this email. SJ stated that she received an email from the Tenant on June 05, 2024, with a link which she could not open.

I find the Tenant submitted insufficient evidence to refute SJ's testimony that no evidence was received from the Tenant in the email sent on June 05, 2024. As the Tenant has failed to meet the burden of proving this evidence was served, it was not accepted as evidence for these proceedings.

On May 23, 2024, the Landlord submitted evidence to the Residential Tenancy Branch. SJ stated that this evidence was personally served to the Tenant on May 23, 2024. CG stated that this evidence was received, although it was served on various dates. As the Tenant acknowledges receiving this evidence, it was accepted as evidence for these proceedings.

On June 02, 2024, the Landlord submitted evidence to the Residential Tenancy Branch. SJ stated that this evidence was personally served to the Tenant on May 31, 2024. CG stated that this evidence was received. As the Tenant acknowledges receiving this evidence, it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Preliminary Matter

The Landlord submitted an Amendment to the Application for Dispute Resolution to the Residential Tenancy Branch, in which the Landlord increased the amount of the monetary claim for unpaid rent and the Landlord added a claim for unpaid utilities.

SJ stated that the Amendment was served to the Tenant, by email, on June 05, 2024. CG stated that this Amendment was not received. CG stated that the Tenant was not

aware the Landlord had increased the amount of the claim or that the Landlord had added a claim for unpaid utilities.

I find the Landlord submitted insufficient evidence to refute CG's testimony that the Amendment was not received by the Tenant. As the Landlord has failed to meet the burden of proving the Amendment was served to the Tenant, I find that the Application for Dispute Resolution has not been amended to include a claim for unpaid utilities. The parties were advised that the claim for unpaid utilities would not be considered at these proceedings.

The parties were advised that I would amend the Application for Dispute Resolution at the hearing to include a claim for all rent currently due. I find that it was reasonable for the Tenant to conclude that the Landlord would seek to recover all of the rent that is currently due, including unpaid rent that has accrued since the Landlord's Application for Dispute Resolution was filed.

Issue(s) to be Decided

Is there a need to issue an Order requiring the Landlord to comply with the Act or the tenancy agreement?

Should a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?

Is the Landlord entitled to an Order of Possession, to a monetary Order for unpaid rent?

Is either party entitled to recover the fee for filing an Application for Dispute Resolution?

Background and Evidence

After considerable discussion about the terms of the tenancy and the issues in dispute at these proceedings, the Landlord and the Tenant mutually agreed to settle all issues in dispute at these proceedings under the following terms:

- The tenancy will end, by mutual agreement, on June 24, 2024
- The Landlord will retain the Tenant's security deposit
- The Tenant will pay \$1,000.00 to the Landlord
- Neither party will make any future claims regarding any issues with this tenancy up to this point in time
- The Tenant will leave the rental unit clean and undamaged.

This agreement was summarized for the parties on at least two occasions. CG and SJ each clearly indicated they agreed to resolve this dispute under these terms.

CG and SJ each acknowledged that they understood they were not required to enter into this agreement and that they understood the agreement was final and legally binding.

As the parties were able to reach a settlement agreement, the matters discussed at the hearing are not being recorded here.

Analysis

All issues at these proceedings have been settled in accordance with the aforementioned terms.

Conclusion

On the basis of the settlement agreement, I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on June 24, 2024. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

On the basis of the settlement agreement, I grant the Landlord a monetary Order for \$1,000.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 Section 9.1(1) of the *Act*.

Dated: June 18, 2024

Residential Tenancy Branch