



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF (Landlord's Application)
CNR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on May 15, 2015 and by the Landlord on May 20, 2015.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and, to recover the filing fee from the Tenant. The Tenant applied to cancel the notice to end tenancy for unpaid rent.

The Landlord appeared for the hearing and provided affirmed testimony as well as a copy of the notice to end tenancy. There was no appearance for the Tenant despite the fact that the Tenant's Application was scheduled to be heard at the same time as the Landlord's Application in this hearing. As there was no appearance for the Tenant during the 20 minute duration of the hearing, I dismissed the Tenant's Application without leave to re-apply.

I then turned my mind to the service of the Landlord's Application to the Tenant. The Landlord testified that he had served a copy of his Application and the Notice of Hearing documents to the Tenant personally on May 23, 2015. In the absence of any evidence before me to dispute this, I accept that the Tenant was personally served with the documents for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for May 2015 unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that this month to month tenancy started on March 15, 2014. Rent of \$550.00 is payable on the first day of each month. The Tenant paid a security deposit of \$250.00 at the start of the tenancy which the Landlord still retains.

The Landlord testified that the Tenant failed to pay rent for \$550.00 on May 1, 2015. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenant's door on May 8, 2015. The Notice was provided into evidence with a vacancy date of May 21, 2015.

The Landlord testified that in June 2015, the Tenant explained that she was giving him rent for June 2015 but acknowledged that rent for May 2015 was still outstanding. The Landlord testified that he accepted the rent money for June 2015 but explained to the Tenant that he was still proceeding with the Application as May 2015 rent was still outstanding and he did not want to re-instate the tenancy. The Landlord testified that since making his Application, the Tenant has also failed to pay rent for July 2015; however, the Landlord did not want to amend his Application to make a monetary claim for July 2015 rent at this point.

The Landlord seeks an Order of Possession as he testified that the Tenant is using her Application as a way to get more time to occupy the rental unit. The Landlord also claims for unpaid May 2015 rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the Act, unless the tenant has right under the Act to withhold it or deduct from it. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

Having examined the copy of the Notice provided into written evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on May 8, 2015 in accordance with Section 88(g) of the Act.

The Tenant did not state on her Application the date she received the Notice. Therefore, pursuant to Section 90(c) of the Act, when a document is served by posting it to the door it is deemed to be received three days later. As a result, the Tenant is deemed to have received the Notice on May 11, 2015. The Tenant would have had until May 16, 2015 to pay the outstanding rent on the Notice or make an Application to dispute the Notice.

While the Tenant did make an Application to dispute the Notice within the required time limit prescribed by the Act, the Tenant did not appear for the hearing to explain why she was disputing the Notice. There is no evidence before me that the Tenant has paid rent for May 2015 or had authority under the Act to not pay rent.

Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed and the Tenant has also failed to pay rent for July 2015, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

The Landlord is also awarded May 2015 unpaid rent in the amount of **\$550.00**. As the Landlord has been successful in proving unpaid rent, the Landlord is also entitled to recover from the Tenant the **\$50.00** filing fee for the cost of this Application, pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$600.00** (\$550.00 + \$50.00).

As the Landlord already holds the Tenant's **\$250.00** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. The Landlord is issued with a Monetary Order for the outstanding balance of **\$350.00** (\$600.00 - \$250.00). This order must be served on the Tenant and may then be filed in the Small Claims Court and enforced as an order of that court if the Tenant fails to make payment. Copies of the above orders are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlord is granted an Order of Possession and may keep the Tenant's security deposit. The Landlord is issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$350.00.

The Tenant's Application is dismissed **without** leave to re-apply as she failed to appear for the hearing.

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: July 06, 2015

Residential Tenancy Branch

