



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 26 minutes. The landlord's agent, DC ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he is the building manager for this rental building and that he had authority to speak on behalf of the landlord company named in this application as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on February 13, 2016, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on February 18, 2016, five days after its registered mailing.

The landlord testified that he served both tenants with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 19, 2016 ("10 Day Notice"), on the same date, by way of posting to the rental unit door where the tenant is residing. The landlord provided a signed, witness proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on January 22, 2016, three days after its posting.

I asked the landlord to provide me with copies of the 10 Day Notice, proof of service of the 10 Day Notice, and mutual agreement to end tenancy after the hearing, by way of facsimile. The landlord said that he had served these documents upon the tenant and the Residential Tenancy Branch ("RTB"), but I had not received it prior to this hearing. I received these documents and considered them prior to writing this decision.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to increase it from \$2,575.00 to \$3,850.00 to include a claim for March 2016 rent and late fees. The landlord indicated this amount in its amendment to the Application but did not serve this amendment upon the tenant, just the RTB. However, I agreed to amend the landlord's Application at the hearing, as per the landlord's verbal request, because the tenant is aware that rent is due on the first day of each month as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent and late fees, despite the fact that he did not attend this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to correct the spelling of the male tenant's name, as the landlord inadvertently misspelled it on the Application.

I do not amend the landlord's application to include a claim to end this tenancy early or to obtain an order of possession based on a mutual agreement to end tenancy, as the landlord did not serve the required amendment forms upon the tenant, just the RTB. I find that the tenant had no notice in order to respond to these claims.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this Application from the tenant?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2015. Monthly rent in the amount of \$1,250.00 is payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord testified that the tenant continues to reside in the rental unit. The landlord provided a copy of the written tenancy agreement for this hearing.

The landlord issued a 10 Day Notice for unpaid rent of \$1,250.00 due on January 1, 2016. The notice indicates an effective move-out date of January 30, 2016. The landlord seeks a monetary order of \$3,750.00 for unpaid rent from January to March 2016 inclusive. The landlord claimed that the tenants did not pay any rent for the above three months. The landlord seeks an NSF fee of \$25.00 for January 2016 rent, and three late fees totalling \$75.00 from January to March 2016 inclusive. The landlord is also seeking to recover the \$100.00 filing fee for this Application from the tenant.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on January 1, 2016, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on February 1, 2016, the corrected effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 1, 2016. As this has not occurred, I find that the landlord is entitled to an Order of Possession, effective at 10:00 a.m. on April 15, 2015, pursuant to section 55 of the *Act*. The landlord said that the parties signed a mutual agreement to end tenancy on March 25, 2016, a copy of which was provided, although he said that the agreement indicates April 25, 2016, in error. The landlord said that he wanted an order of possession to reflect the above mutual agreement. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$3,750.00 from January to March 2016. Therefore, I find that the landlord is entitled to \$3,750.00 in rental arrears for the above period. As per section 7(1)(d) and 7(2) of the *Regulation*, I find that the landlord is entitled to \$75.00 in late fees from January to March 2016, as the tenant did not pay rent for the above months and this amount was indicated in the tenancy agreement for late fees. I deny the landlord's claim of \$25.00 for the NSF fee for January 2016, as the landlord provided no testimony at the hearing regarding this and provided insufficient documentary evidence to support this claim.

The landlord continues to hold the tenant's security deposit of \$625.00. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the deposit of \$625.00 in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was mainly successful in this Application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the Application.

Conclusion

I grant an Order of Possession to the landlord effective **at 10:00 a.m. on April 15, 2016**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$3,300.00 against the tenant. 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 30, 2016

Residential Tenancy Branch