



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF

Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on March 23, 2016, he sent a copy of the Application for Dispute Resolution and Notice of Hearing to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service. Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing on March 28, 2016, the fifth day after it was mailed, pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

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 retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

A written tenancy agreement was entered into and signed by the parties on April 3, 2013. A copy of the written agreement was not provided on file. The tenancy began on May 1, 2013 with a monthly rent of \$1700.00 plus \$150.00/month for utilities payable on the 1st day of each month. Effective February 1, 2016, the monthly rent was reduced to \$1600.00 per month including utilities. The tenant paid a security deposit of \$850.00 at the start of the tenancy. The landlord testified that he continued to hold this \$850.00 security deposit.

The landlord's application included a claim for a monetary award of \$2400.00 for outstanding rent in the amount of \$800.00 that was payable on February 1, 2016 plus \$1600.00 that was payable March 1, 2016. At the hearing, the landlord asked to amend his claim to include outstanding rent in the amount of \$1600.00 that was payable on April 1, 2016. Although the tenant did not have prior notice of this claim, I found that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the amendment. The landlord also seeks to recover the \$100.00 filing fee for a total monetary claim of \$4100.00.

The landlord testified that on February 29, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities by posting a copy to the door of the rental premises.

Analysis

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on March 3, 2016, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, March 13, 2016.

I accept the landlord's uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$1600.00 but failed to pay rent that was payable on February 1, 2016, March 1, 2016 and April 1, 2016. I accept the landlord's claim for outstanding rent of \$4000.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$4100.00

The landlord testified that he continues to hold a security deposit of \$850.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act. Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$3250.00 (\$4100.00 - \$850.00 security deposit).

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of \$3250.00. 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: April 25, 2016

Residential Tenancy Branch