



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Landlord: OPR MNR MNSD MNDC FF

For the Tenant: MT CNR OLC RR FF

Introduction

This hearing dealt with the cross-applications of the parties for Dispute Resolution under the *Residential Tenancy Act* (the “Act”). The landlord applied for an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) dated March 8, 2016, for a monetary order for unpaid rent or utilities, to retain the tenant’s security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenant applied for more time to make an application to cancel a Notice to End Tenancy, to cancel a 10 Day Notice, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, for a rent reduction, to recover the cost of the filing fee and “other”, although the details of dispute do not provide any further details other than the remedies already described above.

The landlord and a support person for the landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

When both parties applied for dispute resolution, the parties were each issued a Notice of Hearing which indicated the hearing date and time as Wednesday, April 6, 2016 at 11:00 a.m. Pacific Time. The hearing began promptly at 11:00 a.m. Pacific Time on April 6, 2016 and lasted for a total of 38 minutes. The tenant did not call into the hearing. After the 10 minute waiting period, the tenant’s application was **dismissed without leave to reapply**. The hearing continued to consideration of the landlord’s application.

I accept the landlord's undisputed testimony that the tenant was served with the landlord's Application and documentary evidence.

Preliminary and Procedural Matter

At the outset of the hearing, the landlord requested to withdraw her claim for money owed or compensation or damage or loss in relation to the strata fines of \$600.00 as she indicated that the tenant has since incurred a total of \$1,200.00 in strata fines and that she will reapply in the future for any damages to the rental unit and any unpaid strata fines. As a result, the landlord is at liberty to reapply for unpaid strata fines and damages to the rental unit pursuant to the timelines provided for under the *Act* as those matters are not before me.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The landlord testified that a month to month tenancy began on August 1, 2015 and that the tenant continues to occupy the rental unit. The landlord stated that monthly rent of \$1,000.00 is due on the first day of each month. The landlord testified that the tenant paid a \$250.00 security deposit which the landlord continues to hold.

The landlord stated that she personally served the tenant with the 10 Day Notice on the evening of March 8, 2016 in the presence of the RCMP at the rental unit address. As the tenant failed to appear at the hearing, the 10 Day Notice is considered to be undisputed by the tenant. The effective vacancy date listed on the 10 Day Notice is March 18, 2016.

The tenant continues to occupy the rental unit and the landlord is seeking an order of possession based on the undisputed 10 Day Notice, and the recovery of the cost of the filing fee.

In addition, the landlord is seeking unpaid rent for the months of February and March of 2016 in the amount of \$1,000.00 per month, plus loss of rent of \$1,000.00 for April 2016 as the tenant continues to occupy the rental unit.

Analysis

Based on the undisputed documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant failed to attend the hearing, I consider the landlord's application to be unopposed. In addition, as the tenant failed to attend the hearing, I find the 10 Day Notice to be undisputed.

Order of possession –Pursuant to section 46 of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was March 18, 2016. The tenant continues to occupy the rental unit. Pursuant to section 55 of the *Act*, I grant the landlord an order of possession **effective two (2) days** after service on the tenant. I find the tenancy ended on March 18, 2016 and that the tenant has been over-holding the rental unit since that date.

Unpaid rent and loss of rent – Pursuant to section 26 of the *Act*, a tenant must pay rent when it is due in accordance with the tenancy agreement. I accept the landlord's undisputed testimony that the tenant owes \$2,000.00 in unpaid rent for the months of February and March of 2016 inclusive, and an additional \$1,000.00 for loss of April 2016 rent for a total of \$3,000.00. As a result, I find the tenant has breached section 26 of the *Act*.

As the landlord's application had merit, I grant the landlord the recovery of the **\$100.00** filing fee. As a result, I find the landlord has established a total monetary claim of **\$3,100.00** comprised of \$3,000.00 in unpaid rent and loss of rent, plus the recovery of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's \$250.00 security deposit which has accrued no interest to date, in partial satisfaction of the landlord's monetary claim. Pursuant to section 67 of the *Act*, I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$2,850.00**.

Conclusion

The landlord's application is successful.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has established a total monetary claim of \$3,100.00 and has been authorized to retain the tenant's full security deposit of \$250.00 to offset that amount. The landlord has been granted a monetary order pursuant to section 67 of the *Act* for the balance owing by the tenant to the landlord in the amount of \$2,850.00. This order may be served on the tenant and filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 7, 2016

Residential Tenancy Branch

