



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

Three parties for the Landlord and the Tenant appeared for the hearing. However, only the property manager and the Tenant provided affirmed testimony during the hearing. The Tenant confirmed receipt of the Landlord’s Application by registered mail and confirmed that she had not provided any evidence prior to this hearing. The parties were informed of the instructions for the conduct of the proceedings and no questions were raised about the process. The parties were given an opportunity to present evidence and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on August 21, 2015 on a month to month basis. A written tenancy agreement was signed and the property manager testified that the current rent payable by the Tenant is \$1,278.00 on the first day of each month.

The property manager testified that the Tenant failed to pay partial rent for April 2016 in the amount of \$988.00. The Tenant then failed to pay full rent for May 2016. As a result, the Landlord served the Tenant on May 9, 2016 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”).

The Notice was served by mail to the Tenant. The Notice was provided into evidence and details a vacancy date of May 24, 2016 due to \$2,266.00 due on May 1, 2016. The property manager testified that the Tenant then paid \$600.00 on May 17, 2016 towards the rental arrears bringing the balance to \$1,666.00. This was the monetary amount being claimed on the Application at the time it was made.

The property manager testified that the Tenant also failed to pay rent for June 2016. This resulted in a total of \$2,944.00 in unpaid rent which the Landlord requested to claim from the Tenant.

The Tenant confirmed receipt of the Notice and testified that she did not dispute the amount of rental arrears claimed by the Landlord. However, the Tenant argued that there was a verbal payment plan that was offered to her to pay off the rental arrears. The Tenant explained that she had been accused of running a business from the rental unit and this was the real motivation for the Landlord ending her tenancy. The Tenant also submitted that the Landlord had failed to deal with mold issues in the rental unit. The property manager denied that the Tenant was offered a payment plan.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement **whether or not** the landlord complies with the Act, unless the tenant has authority to not pay it under the Act. Furthermore, Sections 46(4) and (5) of the Act state 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 they must vacate the rental unit on the date to which the Notice relates.

Having examined the Notice dated May 9, 2016 provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I am also satisfied that this was served to the Tenant by mail pursuant to Section 88(d) of the Act.

In this case, I accept the Landlord's undisputed evidence that the Tenant failed to pay the outstanding rental arrears as documented on the Notice. As a result, 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 is still occupying the rental unit, the Landlord is granted a two day Order of Possession. This order must be served to the Tenant and may then be filed and enforced in the BC Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

In relation to the Landlord's monetary claim, I allow the amendment to increase the Landlord's claim for June 2016 unpaid rent. I do this pursuant to my authority under Section 64(3) (c) of the Act and pursuant to Rule 4.2 of the Residential Tenancy Branch Rules of Procedure. I accept the Landlord's undisputed oral and written evidence that the Tenant failed to pay the rental arrears claimed. As a result, the Landlord is awarded \$2,944.00.

As the Landlord has been successful in the Application, I also award the \$100.00 Application filing fee pursuant to Section 72(1) of the Act. Therefore, the Landlord is granted a Monetary Order in the amount of \$3,044.00. This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court. Copies of the above orders for service and enforcement are attached to the Landlord's copy of this Decision.

Conclusion

The Tenant failed to pay rent as required by the Act. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant and a Monetary Order for \$3,044.00.

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: June 24, 2016

Residential Tenancy Branch