



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF; CNR

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 and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 7, 2016 ("10 Day Notice"), pursuant to section 46.

The landlord and her advocate, GT (collectively "landlord") and the tenant's agent, BK ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her advocate had authority to make submissions on her behalf at this hearing. The tenant's agent confirmed that she had authority to represent the tenant at this hearing. This hearing lasted approximately 56 minutes in order to allow both parties to fully present their submissions. During the hearing, the tenant's agent twice requested time to call the tenant privately from another phone line, and she was given this time to do so, in order to obtain instructions and information from the tenant for the hearing.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlord's 10 Day Notice on May 7, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on May 7, 2016.

Preliminary Issue – Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's Application to increase the landlord's monetary claim to include June 2016 rent of \$720.00 and a June 2016 NSF fee of \$7.00. The landlord requested these additional amounts at the hearing, which were not yet due at the time her application was made on May 16, 2016. The tenant is aware that rent is due on the first day of each month, as per her tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required her to vacate for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to her rent, the landlord would pursue all unpaid rent at this hearing. During the hearing, the tenant agreed that she had not paid the above amounts that were due. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent and NSF fees.

Preliminary Issue – Amendment to Tenant's Application

During the hearing, the tenant requested an amendment to her application to add relief to apply for more time to make an application to cancel the landlord's 10 Day Notice. The landlord opposed this request, indicating that she had waited long enough for this hearing to occur.

I amend the tenant's application to allow her to apply for more time to cancel the 10 Day Notice. As per section 66 of the *Act*, I grant the tenant more time to make her application to cancel the 10 Day Notice. I accept the tenant's evidence that due to medical issues, which the tenant says she suffered from an assault, she was unwell and unable to file her application in time or to realize that she required an application for more time to make an application to cancel the 10 Day Notice.

The tenant's application was filed two days late, as it was due by May 12, 2016 but it was filed on May 16, 2016, which is the next business day following May 13, 2016. Further, the tenant did not apply past the effective date of the 10 Day Notice, which is

May 17, 2016. Therefore, I find that the tenant is not barred by section 66(3) of the *Act*, from applying for more time to cancel the notice.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent or for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to retain 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

While I have turned my mind to the documentary evidence and the testimony of the parties and their advocates, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2016. Monthly rent in the amount of \$720.00 is payable on the first day of each month. A security deposit of \$360.00 was paid and the landlord continues to retain this deposit. A written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit. The landlord issued the 10 Day Notice indicating that unpaid rent of \$720.00 was due on May 1, 2016. The notice indicates an effective move-out date of May 17, 2016.

The landlord seeks a monetary order of \$1,454.00 from the tenant. The landlord seeks \$720.00 for rent for each month from May to June 2016. The landlord seeks \$7.00 for NSF fees for each month from May to June 2016, due to the tenant's two dishonoured rent cheques. Both parties agreed that the tenant did not pay rent totalling \$1,440.00 and NSF fees totalling \$14.00, both from May to June 2016. The tenant said that she did not pay rent because she was assaulted by another tenant in the rental building, that it is the landlord's responsibility to deal with this issue and she was not safe in her rental unit. The landlord also seeks to recover the \$100.00 filing fee for her application from the tenant.

Analysis

Both parties agreed that the tenant failed to pay rent of \$720.00 due on May 1, 2016, within five days of receiving the 10 Day Notice. The tenant made an application pursuant to section 46(4) of the *Act* on May 16, 2016. As noted above, I have allowed the tenant more time to make an application to cancel the notice, as it was made outside the five-day time period.

Section 26 of the *Act* clearly states that the tenant must pay rent “whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement unless the tenant has a right under this *Act* to deduct all or a portion of rent.” I find that despite the tenant’s allegations that she was assaulted by another tenant in the rental building or the tenant’s allegations that the landlord did not rectify the situation, I find that the tenant was still required to pay rent and she did not have an entitlement under the *Act* to deduct any amounts from rent for emergency repairs or from an Arbitrator’s order.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the rent within five days led to the end of this tenancy on May 17, 2016, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by May 17, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*, as the 10 Day Notice also complies with section 52 of the *Act*. Accordingly, I dismiss the tenant’s application to cancel the 10 Day Notice.

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*, *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.

Both parties agreed that the tenant failed to pay rent totalling \$1,440.00 and NSF fees totalling \$14.00, both from May to June 2016. Therefore, I find that the landlord is entitled to \$1,454.00 in rental arrears and NSF fees from May to June 2016.

The landlord continues to hold the tenant’s security deposit of \$360.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the

tenant's security deposit of \$360.00 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 **two days after service of this Order** on the tenant. 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 \$1,194.00 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.

The tenant's application for more time to make an application to cancel the 10 Day Notice is allowed. The tenant's application to cancel the 10 Day Notice is dismissed without leave to reapply.

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 09, 2016

Residential Tenancy Branch