



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An “interim decision,” dated May 27, 2016, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. The interim decision found that there was no due date for rent indicated in the tenancy agreement, which was necessary to determine the validity of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 5, 2016 (“10 Day Notice”), as a landlord cannot ask for rent before the day it is due.

By way of the interim decision, the landlord was required to serve the interim decision, notice of reconvened hearing and application package on the tenant. The landlord testified that the tenant was served with the above documents (collectively “Application”) on June 2, 2016, by way of registered mail. The landlord provided a Canada Post receipt to confirm service. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s Application on June 7, 2016, five days after its registered mailing.

The landlord testified that the tenant was served with the 10 Day Notice on May 5, 2016, by way of posting to the tenant's rental unit door. The landlord provided a signed, witnessed proof of service with his Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on May 8, 2016, three days after its posting.

Preliminary Issue – Amendment of 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 \$1,200.00. I find that the tenant is aware that rent is due 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 earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her 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, despite the fact that she did not attend this hearing.

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?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on February 1, 2016. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenant and the landlord continues to retain this deposit. The landlord provided a copy of the tenancy agreement with his Application. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of May 15, 2016, indicating that rent in the amount of \$1,153.00 was due on May 1, 2016. The landlord provided a copy of the notice. The landlord confirmed that rent payments of \$47.00 before May 1, 2016 was made for May 2016 rent and \$800.00 was made on June 1, 2016 for June 2016 rent. The landlord provided a copy of a written letter, dated June 1, 2016, to the tenant, indicating that he was accepting the payment for "use and occupancy only."

The landlord seeks a monetary order of \$1,553.00 for unpaid rent including \$353.00 for May 2016 rent and \$1,200.00 for June 2016 rent.

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 May 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 May 18, 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 May 18, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*, as the 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent on 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 of \$353.00 for May 2016 and \$1,200.00 for June 2016. Therefore, I find that the landlord is entitled to \$1,553.00 for the above period.

The landlord continues to hold the tenant's security deposit of \$600.00. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award. No interest is payable over this period.

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 \$953.00 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: June 29, 2016

Residential Tenancy Branch