



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC 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 cause 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 9:20 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 July 28, 2016, she personally served tenant M.L.M. with a copy of the Application for Dispute Resolution and Notice of Hearing. The landlord also left copies of the Application for Dispute Resolution and Notice of Hearing with M.L.M. for the other tenants.

Based on the above evidence, for the purposes of the landlords application for an order of possession, I am satisfied that the tenants were personally served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenants.

Section 89 of the Act requires that for an application for dispute resolution, other than an application for an order of possession, if served personally, must be served to each co-tenant separately. Therefore any monetary order arising out of this application will be issued naming only tenant M.L.M. as liable.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend her claim to include outstanding rent in the amount of \$1230.00 per month that was payable for the months of August and September 2016. Although the tenant did not have prior notice of this claim, I find 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 landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession for cause?

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

The tenancy began on April 1, 2015 with a current monthly rent of \$1230.00 payable on the 1st day of each month. The tenant paid a security deposit of \$600.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on May 7, 2016 tenant M.L.M. was personally served with the 1 Month Notice to End Tenancy for Cause.

The landlord's monetary claim is for outstanding rent in the amount of \$4,940.00. In support of this claim the landlord provided a detailed account reconciliation showing a balance outstanding of \$2480.00 as of July 1, 2016. The landlord further testified that no rent payments were made for the months of August and September 2016 bringing the total outstanding to \$4,940.00.

Analysis

I am satisfied that the tenant was personally served with the 1 Month Notice to End Tenancy for Cause on May 7, 2016 pursuant to section 88 of the Act.

Pursuant to section 47 of the *Act*, the tenant may make a dispute application within ten days of receiving the 1 Month Notice. If, as in the present case, the tenant does not make an application for dispute within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, June 30, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, 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 the rent.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$4,940.00.

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 \$5,040.00.

The landlord continues to hold a security deposit of \$600.00. 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 \$4,440.00.

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 \$4,440.00. 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: September 14, 2016

Residential Tenancy Branch