



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- 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;
- seeking an order of possession pursuant to section 55 of the *Act*.

The hearing was conducted via teleconference and was attended by the landlord. No one was in attendance on behalf of the tenant.

The landlord submitted documentary evidence that the tenant was served notice of this application and this hearing by registered mail on August 18, 2016. Canada Post tracking information was submitted in the Landlord's evidence.

Based on the submissions of the landlord, I find the tenant was deemed served notice of this proceeding on August 23, 2016, pursuant to section 90 of the *Act*. Therefore, I continued in the absence of the tenant. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The landlord checked off the box on his application seeking an order of possession based on the issuance of a One Month Notice for Cause but advised that he was also seeking an order of possession based on the issuance of a Ten Day Notice for Unpaid Rent or Utilities. The landlord advised that he was unaware that he needs to "check off" both boxes. I have reviewed the application and file contents and it is clear that the landlords intent was to seek a monetary order based on unpaid rent and that the file

contains a notice to end tenancy on that basis as well. I find there to be no prejudice to the tenant for me to consider that. Pursuant to section 64(3)(c) of the *Act* the landlords' application is amended to reflect that change.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about June 1, 2015. Rent in the amount of \$1550.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$775.00. The tenant failed to pay rent in the month(s) of February 2016 and on February 12, 2016 the landlord served the tenant with a notice to end tenancy.

The landlord stated that the tenant made partial payments and continued to fall behind each month. The landlord testified that the tenancy was not reinstated and that he was trying to work with her but she continually was late in paying the rent. The tenant further failed to pay rent in the month(s) of June - October. The landlord also issued a One Month Notice to End Tenancy for Cause based on repeatedly late payment of rent. The landlord stated that she was late with the rent at least six times in the past 12 months.

Analysis

Residential Tenancy Policy Guideline 38 addresses the issue before me as follows:

Three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

The landlord submitted three 10 Day Notices to End Tenancy for Unpaid Rent or Utilities that was issued over a four month period; November 2015 – February 2016. I accept that the tenant was repeatedly late in paying the rent and that the landlord has provided sufficient evidence to support his position. I accept the landlord's undisputed testimony and I find that the tenant was served with a notice to end tenancy for cause. The tenant did not apply for dispute resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of

the notice. Based on the above facts I find that the landlord is entitled to an order of possession pursuant to Section 55 of the *Act*. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The landlord provided documentary evidence along with his undisputed testimony to support his claim for a monetary order. As for the monetary order, I find that the landlord has established a claim for \$7750.00 in unpaid rent. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's \$775.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$6975.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$6975.00. The landlord may retain the security deposit.

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: October 11, 2016

Residential Tenancy Branch