



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent and for cause, 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; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant did not attend this hearing, which lasted approximately 37 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. The landlord confirmed that he was the property manager for the owner of this rental unit and that he had authority to represent the owner as an agent at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on August 30, 2016, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on September 4, 2016, five days after its registered mailing.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 1, 2016 ("first 10 Day Notice") on the same date to an adult residing with the tenant, the tenant's boyfriend, who signed for the receipt. The landlord provided a signed proof of service with his application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's first 10 Day Notice on August 1, 2016.

The landlord testified that the tenant was personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 7, 2016 ("second 10 Day Notice") on the same date. The landlord provided a signed, witnessed proof of service with his application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's second 10 Day Notice on August 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 monetary claim to include October 2016 rent of \$750.00. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that two 10 Day Notices required her to vacate 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.

At the outset of the hearing, the landlord confirmed that he applied for an order of possession for cause but he was not pursuing that claim at this hearing. Accordingly, this portion of the landlord's application is withdrawn.

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 and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began in March 2015, but he did not know the exact date. He said that he became the property manager for the landlord owner on March 1, 2016. Monthly rent in the current amount of \$750.00 is payable on the first day of each month. Utilities are not included in rent, so the tenant is required to pay additional charges. The tenant did not pay a security deposit to the landlord. The tenant continues to reside in the rental unit. No written tenancy agreement governs this tenancy, as only a verbal agreement was reached.

The landlord seeks a monetary order of \$1,108.07 for unpaid rent, utilities and other charges for this tenancy, as well as recovery of the \$100.00 filing fee.

The landlord said that the tenant failed to pay a total of \$1,108.07 in rent and utilities for this tenancy as per the following breakdown:

- \$750.00 for October 2016 rent;
- \$196.30 for utilities from March 29, 2016 to July 5, 2016;
- \$40.59 for utilities from July 6, 2016 to August 3, 2016.

The landlord indicated the above utility charges in the first and second 10 Day Notices and issued written demand letters providing thirty-day notices to the tenant. The landlord provided copies of these letters as well as the utility bills for the above time periods. The landlord said that the tenant has not paid any rent for October 2016, in the amount of \$750.00.

The landlord seeks \$67.88 for garbage removal from the tenant. The landlord said that he received written notices from the City regarding the unsightly nature of the property and the amount of garbage at the rental unit, which he said is due to the tenant's actions. The notices demand that the garbage be removed and the area cleaned or fines would be issued to the landlord owner of the rental unit. The landlord provided warning letters to the tenant who failed to abide. The landlord said that he did the garbage removal himself and issued an invoice to the landlord owner from his company in the amount of \$67.88, which was paid by the owner. The landlord provided copies of the above letters and invoice, as well as photographs of the property with all the garbage.

The landlord seeks \$53.30 for lawn cutting from the tenant. The landlord said that he received written notices from the City regarding the unsightly nature of the property and the accumulation of weeds and tall grass at the rental unit, which he said is due to the tenant's actions. The notices demand that the weeds and tall grass be removed or fines would be issued to the landlord owner of the rental unit. The landlord provided warning letters to the tenant who failed to abide. The landlord said that he did the lawn cutting and weeding himself and issued an invoice to the landlord owner from his company in the amount of \$53.30, which was paid by the owner. The landlord provided copies of the above letters and invoice, as well as photographs of the state of the weeds and lawn at the property.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full amount of utilities due on August 7, 2016, within five days of being deemed to have received the second 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 second 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on August 18, 2016, the effective date on the second 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 18, 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*. I find that the landlord's second 10 Day Notice complies with section 52 of the *Act*.

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.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$750.00 for October 2016, utilities of \$196.30 from March 29 to July 5, 2016, and utilities of \$40.59 from July 6 to August 3, 2016. The landlord provided utility bills, demand letters and two 10 Day Notices indicating the above amounts. I find that the landlord is entitled to \$750.00 for unpaid rent and \$236.89 for unpaid utilities from the tenant.

The landlord provided undisputed evidence that the tenant failed to remove garbage from the property and attend to the weeding and lawn cutting at the property. The landlord was issued violation notices by the City and was required to complete the work for the tenant and pay for such work. I find that the landlord is entitled to \$67.88 for garbage removal and \$53.30 for lawn cutting from the tenant.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service 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 \$1,208.07 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 landlord's application for an order of possession for cause is withdrawn.

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 28, 2016

Residential Tenancy Branch