



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPC OPR CNC MNR FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 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 October 7, 2016 a copy of the landlord's Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. On October 21, 2016 a copy of the landlord's Amended application for Dispute Resolution was sent to the tenant by registered mail. Registered mail tracking numbers were provided in support of service.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing including the amended application pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

As the tenant did not attend the hearing, the tenant's application is dismissed without leave to reapply.

Issues

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

Is the landlord entitled to a monetary order?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenancy began on December 1, 2014 with a monthly rent of \$1100.00 payable on the 1st day of each month. The tenant paid a security deposit of \$575.00 at the start of the tenancy which the landlord continues to hold.

On September 8, 2016 the tenant was personally served with the 1 Month Notice to End Tenancy for Cause.

On October 12, 2016 the landlord's agent sent a copy of the 10 day Notice to End Tenancy for unpaid rent or utilities to the tenant by registered mail. The notice indicates the tenant failed to pay rent in the amount of \$1100.00 on October 1, 2016. A registered mail tracking number was provided in support of service.

The landlord's monetary claim is for outstanding rent in the amount of \$2200.00. The landlord testified that this includes unpaid rent for the months of October and November 2016.

Analysis

As the tenant disputed the 1 Month Notice to End Tenancy, I am satisfied that the tenant was personally served with the 1 Month Notice.

I am also satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on October 17, 2016, five days after its mailing, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, October 27, 2016.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

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 \$2200.00.

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 \$2300.00.

The landlord continues to hold a security deposit of \$575.00. 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 a Monetary Order in the amount of \$1725.00.

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 \$1725.00. 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: November 10, 2016

Residential Tenancy Branch