



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, received at the Residential Tenancy Branch on September 20, 2016 (the "Application"). The Landlord applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing on his own behalf, as did the Tenant. Both parties provided a solemn affirmation.

The Landlord testified that the Tenant was served with the Landlord's Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence in person on September 20, 2016. The Tenant acknowledged receipt on that date. I find the Tenant was duly served with the Landlord's Application package on September 20, 2016.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
2. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
3. Is the Landlord entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed with respect to the terms of the tenancy agreement between them. They confirmed the tenancy began on July 1, 2004. Currently, rent in the amount of \$660.00 per months is due on the first day of each month. The Tenant paid a security deposit of \$270.00 at the beginning of the tenancy.

According to the Landlord, rent was not paid in full on September 1, 2016. At that time, \$1,380.00 was outstanding. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 13, 2016 (the "10 Day Notice"). The Landlord testified the 10 Day Notice was served on the Tenant in person on September 13, 2016. The Tenant acknowledged receipt on that date. A copy of the 10 Day Notice was included with the Landlord's documentary evidence.

Further, the Landlord testified the Tenant has not paid rent for the months of October and November 2016. Currently, rent in the amount of \$2,700.00 is outstanding.

The Tenant agreed with the Landlord's testimony. He stated he is on disability and acknowledged he has been unable to pay rent. He testified to his belief there was no point making partial payments because the tenancy would be ending regardless.

Analysis

Based on the affirmed oral testimony and the documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy and wishes to dispute it has five days to either pay rent or file an application for dispute resolution. When a tenant does not pay rent or file an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

In this case, the Landlord testified that the Tenant did not pay outstanding rent when due on September 1, 2016. Accordingly, the Landlord served the Tenant with the 10 Day Notice in

person on September 13, 2016. I find that the 10 Day Notice was duly served on the Tenant on that date.

As noted above, a tenant has five days after receiving a notice to end tenancy for unpaid rent to either pay rent or make an application for dispute resolution. I find the Tenant has done neither. Accordingly, the Tenant is conclusively presumed to have accepted the end of the tenancy. As a result, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenant.

The Landlord testified that rent in the amount of \$2,700.00 remains outstanding. The Tenant did not dispute this amount. Accordingly, I find the Landlord is also entitled to a monetary award of \$2,700.00 for unpaid rent.

Having been successful, I find the Landlord is also entitled to recover the \$100.00 filing fee paid to make this Application.

Pursuant to section 67 of the *Act*, I grant the Landlord a monetary order in the amount of \$2,800.00, which consists of \$2,700.00 for unpaid rent and \$100.00 for recovery of the filing fee.

Conclusion

I grant the Landlord an order of possession, which will be effective two (2) days after service on the Tenant. This Order may be filed in and enforced as an order of the Supreme Court of British Columbia.

I grant the Landlord a monetary order in the amount of \$2,800.00. This Order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 14, 2016

Residential Tenancy Branch