



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR OPL FF

Introduction

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

- an order of possession for unpaid rent and/or landlord's use of property 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.

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 25, 2016, he personally served the tenant with a copy of the Application for Dispute Resolution and Notice of Hearing.

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 pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to an order of possession for unpaid rent and/or landlord's use of property?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover its filing fee?

Background and Evidence

The tenant was already living in the rental unit when the landlord purchased the property approximately 2 years ago. The tenant pays a monthly rent of \$525.00 payable on the 1st day of each month.

The landlord testified that on August 24, 2016 the tenant was personally served with the 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord testified that subsequently, on October 5, 2016, the tenant was personally served with the 10 Day Notice to End Tenancy for unpaid rent. The landlord submitted a witness statement signed by his neighbor as proof of service of both of the above Notices.

The landlord testified that the tenant failed to pay rent after being served with the 2 Month Notice. The landlord is claiming unpaid rent for the months of September, October, November and December 2016. The landlord acknowledged the tenant was entitled to one month's free rent as a result of the 2 Month Notice for landlord's use and agreed to deduct this amount from the claim.

Analysis

I am satisfied that the tenant was personally served with the 2 Month Notice to End Tenancy for Landlord's Use of Property on August 24, 2016, pursuant to section 88 of the Act.

Pursuant to section 49 of the *Act*, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. If, as in the present case, the tenant does not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, October 31, 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 \$1575.00 for the months of September, November and December 2016. The rent for October 2016 is deemed to have been paid as the tenant was permitted to withhold this amount.

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. This landlord is granted a monetary order in the amount of \$1675.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant 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 \$1675.00. 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: December 13, 2016

Residential Tenancy Branch