



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's Application made November 22, 2016: OPR, MNR, FF.

Tenant's Application made November 23, 2016: MT; CNR; FF.

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act"). The tenants are seeking more time to file their application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"); to cancel the 10 Day Notice issued November 15, 2016; and to recover the cost of the filing fee for their application from the landlord (collectively the "Tenants' Application").

The landlord is seeking an order of possession for unpaid rent; a monetary award for unpaid rent; and to recover the cost of the filing fee for their application from the tenant (collectively the "Landlord's Application").

Both landlords R.L. and K.L. (the "landlord") appeared at the teleconference hearing. The tenant did not appear but had the opportunity to do so for the length of the hearing which lasted 21 minutes. Landlord R.L. gave affirmed testimony on behalf of both landlords. During the hearing the landlord was given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the landlord's Notice of a Dispute Resolution Hearing (the "Notice of Hearing") was considered.

Landlord R.L. testified that a copy of the Notice of Hearing and the landlord's Application was left with the tenant in person on November 23, 2016. Based upon the undisputed testimony of the landlord, I find that the tenant has been duly served with the Notice of Hearing and the landlord's Application on November 23, 2016, in accordance with section 89 of the *Act*.

The tenant was also given a Notice of Dispute Resolution Hearing document dated December 15, 2016 which scheduled their hearing for Thursday December 15, 2016 at 11:00 a.m. Pacific Time. The landlord appeared at the teleconference hearing and was ready to proceed. Following the 10 minute waiting period the tenant's application was **dismissed without leave to reapply.**

Issue(s) to be Decided

- Is the landlord entitled to an order of possession for unpaid rent, pursuant to s.55 of the *Act*?
- Is the landlord entitled to a monetary order for unpaid rent, pursuant to s.67 of the *Act*?
- Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to Section 72 of the *Act*?

Background and Evidence

The landlord testified that a one year fixed term tenancy started on July 15, 2016 pursuant to a written tenancy agreement that was signed by the tenant on July 6, 2016. The rent is \$1,200.00 due on the first day of each month. The landlord did not receive a security deposit. The landlord provided the details as to the tenancy agreement orally as no copy was submitted.

The landlord testified that the tenant only paid \$1,000.00 of the \$1,200.00 rent that was due on November 1, 2016.

The landlord testified that on November 15, 2016 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), which had an effective date of November 25, 2016 was served on the tenant in person. The Notice indicated that it would be automatically cancelled if the landlord received the full amount of rent due as at November 1, 2016, within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord testified that after service of the 10 Day Notice, the tenant paid the \$200.00 to the landlord on November 23, 2016. The landlord further testified that the tenant did not vacate the rental unit and that the tenant did not pay the \$1,200.00 rent that was due on December 1, 2016.

The landlords' monetary claim is for \$1,200.00 for unpaid rent for December 2016 and the \$100.00 filing fee for a total of \$1,300.00.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing and landlord's Application and did not attend the hearing, I consider this matter to be unopposed by the tenant. As a result, I find the landlord's application is fully successful as I find the evidence supports the landlord's claim and is reasonable.

I find that the tenant was served with a 10 Day Notice that required the tenant to vacate the rental unit on November 25, 2016, pursuant to section 46 of the *Act*.

As the tenant did not move out and is still residing in the rental unit, I find that the tenant was required to pay \$1,200.00 rent for December 2016. Accordingly, I find that the landlord has established a total monetary claim in the amount of \$1,200.00 for unpaid rent.

Section 46 of the *Act* stipulates that a tenant has five days from the date of receiving the 10 Day Notice to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me although the tenant filed an application to dispute the notice, it has been dismissed as they did not appear in support of their own application.

I find that the 10 Day Notice complies with s.52 of the *Act* and that the landlord served the 10 Day Notice in accordance with the *Act*. Therefore, I find that the tenant is not entitled to cancellation of the 10 Day Notice and I uphold the notice to end the tenancy.

Pursuant to section 55 of the *Act*, when the landlord's notice to end a tenancy complies with section 52 of the *Act* and I am dismissing the tenant's Application, I am required to grant an order of possession. As a result, I find the landlord is entitled to an order of possession that is effective two days after service on the tenant.

As the landlord's claim has merit I find, pursuant to section 72 of the *Act* that the landlord is entitled to recover the \$100.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Based on these determinations, I grant the landlord a monetary Order in the amount of \$1,300.00.

As the tenancy has ended pursuant to section 55 of the *Act*, I find that the landlord is entitled to an Order of possession that is effective two days after service on the tenant.

Conclusion

I dismiss the tenant's application without leave to reapply.

The landlord is awarded recovery of the \$100.00 filing fee.

Pursuant to section 67, the landlord is granted a monetary order in the amount of \$1,300.00, for unpaid rent for December 2016 and the filing fee, which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Pursuant to section 55 of the *Act*, 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.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 23, 2016

Residential Tenancy Branch