



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF, O

Introduction

This is an application by the landlord under the *Residential Tenancy Act* (the “Act”) for an order of possession pursuant to s. 55, a monetary order for unpaid rent pursuant to s. 67, and recovery of the filing fee pursuant to s. 72.

Although the landlord seeks an order of possession based on cause as well as on unpaid rent, I have not considered the allegations of cause, including the failure to pay a pet deposit owing, because the matter can be resolved on the basis of unpaid rent.

Counsel for the landlord advised at the hearing that the landlord was also seeking an order with respect to the tenant’s having changed some locks on the property. I have not considered that request as I am not satisfied it is properly before me, as it is not included in the landlord’s application or amendments to the application.

The tenant did not attend the hearing. The landlord attended the hearing with counsel and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated November 10 (the “Notice of Hearing”), the landlord’s Application for Dispute Resolution, and supporting documentary evidence was considered (collectively, the “Application Package”. The landlord provided affirmed testimony that she served the Application Package to the tenant in person on November 10, 2016. She also provided an unsigned witness statement accompanied by a photocopy of an RCMP Constable’s card confirming the same. The landlord gave affirmed testimony that the Constable had provided this witness statement without signing it.

The landlord also testified that she subsequently served the tenant with two Amendments to an Application for Dispute Resolution (the “Amendments”). The first Amendment, dated November 14, 2016, was for an order of possession based on a 10 Day Notice to End Rent or Unpaid Rent

or Utilities (the “10 Day Notice”). The second Amendment, dated November 18, 2016, added a monetary claim for unpaid rent for November in the amount of \$1,029.00 and included a Monetary Worksheet. Both Amendments were served by registered mail to the rental unit address on November 15 and November 18, respectively. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers for both Amendments. Based on this documentary evidence and the oral testimony of the landlord, and in accordance with sections 89 and 90 of the Act, the tenant is deemed to have been served with Amendments the fifth day after their registered mailing – on November 20 and 23, respectively.

I have reviewed and considered all evidence and testimony before me that met the requirements of the Rules of Procedure, but refer to only the relevant facts and issues in this decision.

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?

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on November 1, 2014. The agreement shows that monthly rent of \$1,000.00 is due on the first day of each month. Although the landlord did not submit a Notice of Rent Increase, she did submit receipts for recently paid rent, showing that the monthly rent is currently \$1,029.00. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold.

At the hearing the landlord advised that the parties attended another hearing on November 17, 2016 with respect to this same tenancy. The file number for this previous hearing is set out on the cover page for ease of reference. That hearing concerned a 1 Month Notice to End Tenancy for Cause dated September 18, 2016. At that hearing the parties reached a settlement, and I have reviewed the settlement agreement. Among other things, it was agreed that the tenancy would end January 30, 2017 and the landlord was granted an order of possession for that date. It was also agreed that the landlord would waive the payment of rent for December 2016 and January 2017. The agreement also recognizes that there may be another dispute about rent paid for earlier months, and that such dispute was not adjudicated or otherwise resolved.

The landlord testified that the tenant has failed to pay the full rent due on November 1, 2016. The landlord issued the 10 Day Notice to End Tenancy on November 2, 2016 and served it on the tenant by leaving a copy of it with the tenant's adult son, whom, she testified, has been residing with the tenant since the spring of 2016. The landlord provided a Proof of Service document with a signed witness statement confirming that the 10 Day Notice was handed to the tenant's son on November 2, 2016. The 10 Day Notice had an effective date of November 2, 2016, corrected pursuant to s. 53 of the Act to November 12, 2016.

The tenant failed to either dispute the notice or pay the full rent owing within five days of being served. The landlord stated that the tenant remains in the rental unit.

Analysis

Based on the undisputed documentary evidence and testimony of the landlord provided during the hearing, and on the balance of probabilities, I find that the tenant failed to pay the full rent that was due on November 1, 2016 within five days of being served the 10 Day Notice. It is clear that the tenant has not made an application pursuant to s. 46(4) within five days of receipt of the 10 Day Notice.

In accordance with s. 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 November 12, 2016, the corrected effective date on the 10 Day Notice. The tenant and anyone on the premises were required to vacate the premises by November 12, 2016. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to s. 55 of the *Act*. I find that the landlord's 10 Day Notice complies with s. 52 of the *Act*.

I note that the issue of the November rent did not form part of the settlement agreement reached at the previously mentioned hearing. As the landlord has now been issued an order of possession effective two (2) days after service on the tenant, the this tenancy may end earlier than the date set out in the settlement agreement if the landlord chooses to enforce this two (2) day order now, or the landlord may chose to wait until the time chosen to end the tenancy as agreed to in the settlement agreement.

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.

The landlord provided undisputed evidence that the tenants failed to pay rent for November 2016. Therefore, I find that the landlord is entitled to \$1,029.00 in rental arrears for the above period.

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

The landlord continues to hold the tenant's security deposit of \$500.00. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of s. 72 of the Act, I authorize the landlord to retain the tenant's security deposit of \$500.00 in partial satisfaction of the monetary claim and I grant the landlord a monetary order for the balance due of \$629.00

Conclusion

The landlord's application is allowed.

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 for the landlord in the amount of \$629.00. 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: December 13, 2016

Residential Tenancy Branch