



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNDC 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 utilities pursuant to section 55;
- a monetary order for unpaid rent and compensation for loss 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. All named parties attended the hearing. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issues – Adjournment request and Amendment to Landlord's Application

At the outset of the hearing, the tenant requested an adjournment to the hearing stating that she has been calling from her hospital bed and does not have any of the information before her to proceed with the hearing. The tenant testified that she had been in the hospital since the night of February 8, 2017 due to low potassium.

The landlord objected to the adjournment request.

The tenant submits she has been in the hospital since the night of February 8, 2017 which is more than 24 hours prior to the scheduled hearing time. The tenant had ample opportunity to submit supporting documentation that she had been hospitalized or make arrangements to have someone attend the hearing on her behalf or provide her with the information she needed for the hearing. Further, the tenant has not filed any application to dispute the 10 Day Notice to End Tenancy or submitted any evidence in response to the landlord's application. For these reasons, I declined the tenant's adjournment request and advised the hearing would proceed as scheduled.

The tenant chose to disconnect from the conference call and the hearing proceeded in the absence of the tenant.

During the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend her claim to include outstanding rent in the amount of \$2000.00 that was payable on February 1, 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment pursuant to section 64(3)(c) of the Act.

Issues

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

Is the landlord entitled to a monetary award for unpaid rent and/or compensation for loss?

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

Background and Evidence

The tenancy began on June 1, 2016 with a monthly rent of \$2000.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1000.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on December 13, 2016 she served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities by leaving a copy in the mail slot of the rental unit address. A witnessed proof of service of this Notice was provided with the application. The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$8200.00. The landlord testified that this includes unpaid rent of \$200.00 from the month of October 2016 and the full rent of \$2000.00 for the period of November 2016 to February 2017.

Analysis

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on December 16, 2016, three days after deposit in the mail slot, 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, December 26, 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 find that the tenant was obligated to pay monthly rent in the amount of \$2000.00 but failed to pay rent as per the landlord's testimony. I accept the landlord's claim for outstanding rent of \$8200.00. 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 \$8300.00.

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 \$8300.00. 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: February 10, 2017

Residential Tenancy Branch

