



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR CNR FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At 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 \$1600.00 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.

Issues

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

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

Should the 10 Day Notice be cancelled and is the tenant entitled to recover the filing fee for this application from the landlord.

Background and Evidence

The tenancy began on May 1, 2016 with a monthly rent of \$1600.00 payable on the 1st day of each month. The tenants paid a security deposit of \$800.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenants failed to pay \$800.00 of the \$1600.00 rent payable on January 1, 2017. The landlord testified that on January 16, 2017 the landlords personally served the tenant T.H. with the 10 day Notice to End Tenancy for unpaid rent or utilities. 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 tenant acknowledged service of the 10 day Notice and that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$2400.00. The landlord testified that this includes unpaid rent of \$800.00 for January 2017 and \$1600.00 for February 2017. The landlord is also claiming a \$7.00 NSF charge for the month of January 2017 and in the hearing requested to recover the filing fee.

The tenant agreed to the amount of outstanding rent and NSF charge as claimed by the landlord.

The tenant's only argument was that the monetary order worksheet was not signed by the landlord.

Analysis

I am satisfied that the tenants were personally served with the 10 day Notice to End Tenancy on January 16, 2017 pursuant to section 88 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.

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.

Although the tenant filed an application for dispute resolution, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is

upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the Notice issued on January 16, 2017 complies with the requirements of Section 52 of the *Act*, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the *Act*.

I accept the landlord's claim for outstanding rent and NSF charge in total of \$2407.00.

As the landlord did not make an application for recovery of the filing fee and provide prior notice to the tenants of such claim, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

As the tenants application is dismissed, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for their application from the landlord.

The landlord continues to hold a security deposit of \$800.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1607.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants 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 **\$1607.00**. Should the tenants 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 20, 2017

Residential Tenancy Branch