



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSC, MNDC, FF

Introduction

This was the landlord's application for an order of possession for unpaid rent, a monetary order for unpaid rent, a monetary order for damage or loss, authorization to retain the security and/or pet damage deposit, and authorization to recover the application filing fee. The landlord's application was based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 5, 2017, with an effective date of January 15, 2017 (the "10 Day Notice").

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

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord provided affirmed testimony that he sent these materials, along with additional supporting materials including the 10 Day Notice, by two methods. He testified that he delivered the materials by hand to the tenant on January 27, 2017 and that he also sent them by registered mail to the rental unit address on the same day. A Canada Post registered mail receipt and address slip was included in the landlord's evidence. In accordance with sections 89 and 90 of the Act, I accept that the tenant has been served with the application, notice of hearing, and supporting evidence, including an additional copy of the 10 Day Notice.

The landlord amended the application during the hearing to add a claim for outstanding February rent and I accepted the amendment under Rule 4.2 of the Rules of Procedure because a tenant can reasonably anticipate that the amount owing for rent will increase after the date of the application. The landlord also withdrew the claim for a monetary order for damage or loss other than the claim for unpaid rent.

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 retain the security damage deposit?

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

Background and Evidence

According to the two pages of the written tenancy agreement that were in evidence and the landlord's affirmed and undisputed evidence, this tenancy began in July of 2004. Monthly rent is currently \$1,072.92. Notices of Rent Increase were included in the landlord's materials. A security deposit of \$422.50.00 was paid at the beginning of the tenancy and remains in the landlord's possession.

The landlord testified that he served the tenant with the 10 Day Notice on January 5, 2017 (the "10 Day Notice") by posting it on the door of the rental unit and that as of the date of the 10 Day Notice, there was \$1,793.76 owing. A Proof of Service document was been submitted by the landlord but was not signed or dated by the third party witness. Nevertheless I accept the landlord's undisputed and affirmed testimony with respect to service. Section 90 of the Act provides that a party is deemed to have received a document three days after it has been posted. Accordingly I accept that the tenant was served with the 10 Day Notice on January 8, 2017.

On January 12, 2017, the landlord and the tenant entered into a Mutual Agreement to End Tenancy, which provided that the tenancy would end on February 28, 2017. The Mutual Agreement includes a letter that states that the Mutual Agreement applies only if the tenant pays outstanding arrears in full by January 20, 2017. A copy of the Mutual Agreement and the letter were in evidence.

The landlord testified that the tenant did not pay the amount owing in full by January 20, 2017 and that \$493.76 still remains outstanding. The tenant did pay \$1,300.00 on January 20, 2017 and the landlord included a copy of a receipt marked "use and occupancy" for this payment in his evidence. The landlord's rent ledger for this tenancy was also in evidence.

The landlord further testified that the tenant has failed to either dispute the notice or pay the full rent owing. Indeed, the tenant has not paid for February, 2017. The landlord believes that the tenant remains in the rental unit.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I accept the landlord's evidence that \$493.76 remains outstanding for the period up to and including January, 2017 such that the tenant has not paid the amount owing in full within five days of receipt of the 10 Day Notice. The tenant has not made an application to dispute the 10 Day Notice.

In accordance with section 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 January 18, 2017, the corrected effective date on the 10 Day Notice. The tenants and anyone on the premises were required to vacate the premises by that date. As this has not occurred, and as rent has not been paid for February 2017, I find that the landlord is entitled to a two (2) day order of possession. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Sections 7 and 67 of the Act establish 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 tenant owes \$1,566.68, inclusive of February's rent. The landlord also claimed a \$25.00 late fee for February. However, those pages of the tenancy agreement that were in evidence did not establish the landlord's right to charge a late fee, and the landlord offered no further submissions on this subject. Accordingly I decline to award a late fee for February.

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. Over the period of this tenancy, \$14.97 in interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenant's security deposit plus interest in the total amount of \$437.47 in partial satisfaction of the monetary claim.

I issue a monetary order against the tenant and in favour of the landlords for **\$1,229.21**.

Conclusion

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 for **\$1,229.21**, which allows the landlord to obtain a monetary award for unpaid rent and the filing fee, and to retain the security deposit plus interest on the deposit for this tenancy.

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 *Residential Tenancy 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: February 22, 2017

Residential Tenancy Branch