



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act"):

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice or the landlord's application for dispute resolution. Neither party submitted any written evidence. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the landlord's 10 Day Notice, and the landlord's application.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation as claimed?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around each are set out below.

This tenancy began in July, 2016. The rental unit is the upper floor of a detached residence. The parties disagreed on the amount of monthly rent. The landlord testified

that the rent was originally \$1,650.00 but was increased to \$1,700.00 when the tenant took possession of an additional room in the rental property. The tenant testified that the rent is \$1,650.00 for the floor and there is no provision in the rental agreement that the rent increases based on the number of rooms occupied. Neither party submitted a written tenancy agreement into evidence. The landlord testified that a security deposit of \$825.00 was paid by the tenant at the start of the tenancy but was used during the tenancy and no longer held by the landlord.

The landlord testified that the tenant has failed to pay the rent for December, 2016 and January, February, March, 2017. The tenant confirmed that he has not paid the rent for these months. The landlord testified that the tenancy arrear is \$5,100.00 based on monthly rent of \$1,700.00.

The tenant testified that he has not paid rent since December 2016 as the rental unit is in need of repairs which the landlord has neglected to perform. The tenant testified that the landlord has cut electricity service in the rental unit and has caused him damage and loss. The tenant said that he should not be expected to pay the rent as the landlord has failed to perform her duties.

Analysis

I accept the landlord's evidence that monthly rent is \$1,700.00. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,700.00. If the tenant had issues with the rental unit or the services promised by the landlord that was withheld it was his responsibility to pursue them lawfully. The tenant was not authorized to withhold the monthly rent simply because he felt he could do so.

I accept the landlord's evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 19, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the landlord's evidence that the total amount of arrear for this tenancy is \$5,100.00. I issue a monetary award in the landlord's favour for unpaid rent of \$5,100.00 as at March 21, 2017, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **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 in the landlord's favour in the amount of \$5,200.00 which allows the landlords to recover unpaid rent and the filing fee for their application:

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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 21, 2017

Residential Tenancy Branch