



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF CNR ERP PSF RP RR

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;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;
- various other remedies under the Act.

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

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy for unpaid rent, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

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 from the tenants?

Background and Evidence

The tenancy began approximately 8 years ago. The rental unit is a suite at the back of an old unoccupied building. The landlord purchased the building 3 years ago and was expecting vacant possession but discovered shortly after that the tenant had been residing in the suite at the back. The tenancy continued and the current monthly rent is \$550.00 payable on the 1st day of each month. A security deposit was not paid at the start of the tenancy.

The landlord testified that on February 1, 2017 he personally served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities. A proof of service form by which the tenant signed acknowledging receipt 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 \$2450.00. The landlord testified that this includes unpaid rent in the amount of \$450.00 for November 2016, \$350.00 for December 2016, and \$550.00 per month for January, February and March 2017.

The tenant acknowledged service of the 10 day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice.

The tenant agreed to the amount of outstanding rent as claimed by the landlord but argues he should not have to pay the rent due to the condition of the rental unit.

Analysis

I am satisfied that the tenant was personally served with the 10 day Notice to End Tenancy on February 1, 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 by the landlord 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 of \$2450.00.

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 \$2550.00.

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 \$2550.00. 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: March 22, 2017

Residential Tenancy Branch