



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the Act") for orders as follows: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; an order to retain the tenant's security deposit pursuant to section 38; and authorization to recover the filing fee for the cost of this application pursuant to section 72.

The tenant did not attend this hearing despite the fact that he made his own application to cancel the landlord's Notice to End Tenancy. The landlord attended and was given full opportunity to be heard, to present evidence and to make submissions. The teleconference line remained open until 9:44 a.m.

The landlord provided evidence that a 10 Day Notice to End Tenancy for Unpaid Rent was personally served to the tenant on March 2, 2017; the 10 Day Notice was signed "received" by the tenant. The landlord testified that the tenant continues to reside in the rental unit. The landlord gave sworn undisputed testimony that he served the tenant with the Application for Dispute Resolution hearing package personally on March 8, 2017. Based on the testimony of the landlord, I accept that the tenant was duly served with the 10 Day Notice on March 2, 2017 in accordance with section 88 of the Act. I also accept that the tenant was duly served with the landlord's Application for Dispute Resolution hearing package on March 8, 2017 both in accordance with section 89 of the Act.

Preliminary Matters

On March 7, 2017, the tenant submitted his application to cancel the landlord's Notice to End Tenancy. The tenant's application was set to be heard on April 13, 2017. I have considered whether this matter should be delayed to take into consideration the tenant's pending application. However, I note that I have found that the tenant was properly served with the landlord's application which included a Notice of Hearing with this

hearing's date. As I have accepted that the tenant was properly served with the landlord's notice, he was obliged to attend this hearing to dispute the landlord's application or, at minimum, request an adjournment to the second hearing date.

Furthermore, the landlord's burden of proof in his application is not lowered because the tenant failed to attend this hearing. The burden of proof upon the landlord is the same requisite burden whether an Order of Possession is sought by the landlord in these circumstances or whether a cancellation of a notice is sought by the tenant: the landlord must justify the grounds for his notice to end tenancy, the validity of his notice to end tenancy, and his application for a monetary award. Based on all of the reasons I have provided, I allow the landlord to proceed with his application.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Unpaid Rent?

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

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

Background and Evidence

The landlord gave evidence that the residential tenancy agreement began on November 26, 2016 when the tenant moved into the rental unit. The rental amount for this unit was established at \$1200.00 payable on the first of each month. The landlord submitted a copy of the tenancy agreement indicating the start date, the rental amount and the security deposit paid at the outset of this tenancy. The landlord testified that he continued to hold the \$600.00 security deposit paid by the tenant in two installments - on November 11, 2016 and November 26, 2016.

The landlord testified that the tenant did not pay the \$1200.00 monthly rental amount on December 1, 2016, January 1, 2017 or February 1, 2017. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent after the tenant did not pay the March 2017 rent. The landlord served the 10 Day Notice to the tenant on March 2, 2017. The landlord testified that the tenant has not paid any rental arrears since his receipt of the 10 Day Notice. The landlord testified, supported by the tenant's own written submissions, that the tenant provided a reason why he had been unable to pay rent and an indication that he would do so as soon as practicable. The landlord testified that the tenant has not paid any rental arrears as of the date of this hearing. The landlord has applied for an Order of Possession of the rental unit.

The landlord also applied for a monetary award of \$4800.00 for 4 months of unpaid rent; December 2016; January 2017; February 2017; March 2017. The landlord testified,

referring to his documentary evidence submitted, the tenant has regularly indicated that he will pay in 'just a few more days'. The landlord testified that the tenant has been promising payment of rent since the first month of this tenancy. The landlord testified that the tenant has paid no rent amount since he moved in on November 26, 2016.

Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden returns to the landlord to justify the grounds to end the tenancy and the validity of the notice. On issuing a 10 Notice to End Tenancy for Unpaid Rent on March 2, 2017, the landlord claimed that the tenant had not paid \$1200.00 rent due March 1, 2017 and that the tenant had a total of \$4800.00 in rental arrears as of March 2, 2017.

I accept the sworn undisputed testimony and documentary evidence of the landlord as proof that the tenant did not pay rent for December 1, 2016, January 1, 2017, February 1, 2017 and March 1, 2017. While the landlord acknowledged receipt of the tenant's application to cancel the 10 Day Notice to End Tenancy, the landlord gave evidence sufficient to meet his burden of proof that rent has not been paid. I find that the tenant failed to pay the rental arrears within five days of receiving the 10 Day Notice to End Tenancy.

Section 26(1) of the Act sets out the rules about payment and non-payment of rent,

26 (1) 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 the landlord has shown sufficient grounds to validate the 10 Day Notice to End Tenancy. The landlord provided sufficient evidence that the tenant did not pay rent as required by the tenancy agreement and, on receipt of the 10 Day Notice to End Tenancy, the tenant did not pay the rental arrears owed to the landlord. The landlord's 10 Day Notice is valid and I find that the landlord is entitled to a 2 day Order of Possession.

The landlord has proven the outstanding rent amounts owed by the tenant. The landlord is also entitled to a monetary order for the months of December 2016, January 2017, February 2017, and March 2017 totalling \$4800.00.

The landlord testified that he continues to hold a security deposit of \$600.00 plus any interest from November 26, 2016 to the date of this decision for this tenancy. 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 tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. [There is no interest payable for this period.]

As the landlord was successful in this application and applied to recover his filing fee, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlord as follows:

Rental Arrears for 4 months' rent Dec 2016; Jan 2017; Feb 2017; Mar 2017	\$4800.00
Less Security Deposit	-600.00
Recovery of Filing Fee for this application	100.00
Total Monetary Award	\$4300.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.

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: April 3, 2017

Residential Tenancy Branch