



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF, ET (Landlord's Application)
 CNR, MNR, MNDC, RR (Tenant's Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on March 16, 2017 and by the Landlord on March 28, 2017.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and, to recover the filing fee from the Tenant. The Landlord also applied for an early end to the tenancy which was withdrawn during the hearing as this matter related to a notice to end tenancy for unpaid rent.

The Tenant applied to cancel the notice to end tenancy for unpaid rent, for a Monetary Order, and to reduce rent for repairs, services or facilities agreed upon but not provided.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant despite the fact that the Tenant's Application was scheduled to be heard at the same time as the Landlord's Application in this hearing. As there was no appearance for the Tenant during the 12 minute hearing, I dismissed the Tenant's entire Application without leave to re-apply.

I then turned my mind to the service of the Landlord's Application to the Tenant. The Landlord's agent testified that the Landlord served the Tenant with a copy of the Application and the Hearing Package to the Tenant personally on April 1, 2017. The Landlord provided a witness statement verifying this method of service.

In the absence of the Tenant to dispute this, I accept the Tenant was served with the documents for this hearing pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord's agent testified that this tenancy started on February 15, 2017 for a fixed term of three months due to expire on May 15, 2017. Pursuant to a signed tenancy agreement, at the end of this fixed term date the tenancy is to end and the Tenant is required to vacate the rental unit.

The Landlord's agent testified that the Tenant is to pay \$900.00 per month in rent and although the tenancy agreement states this is payable on the 15th day of each month, the Landlord's agent testified that the rent was payable for the first two weeks of the tenancy on February 15, 2017 and on the first day of each month thereafter. The Tenant paid a security deposit of \$450.00 at the start of the tenancy which the Landlord still retains.

The Landlord's agent testified that the Tenant failed to pay any rent for the first two weeks of the tenancy, owing \$450.00. The Landlord's agent stated that the Tenant was allowed to deduct \$100.00 from this amount for cleaning the Tenant did to the rental unit. However, the Tenant then failed to pay any rent for March 2017.

As a result, the Landlord personally served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") on March 10, 2017. The 10 Day Notice was provided into evidence and shows a vacancy date of March 20, 2017 due to \$1,250.00 for February and March 2017 unpaid rent.

The Landlord testified that the Tenant made payment of March 2017 rent on March 30, 2017. The Landlord provided the Tenant with a receipt for this payment for use and occupancy only; this was provided into evidence. The Landlord's agent testified the Tenant has failed to pay any rent for April 2017 leaving an outstanding balance of \$1,250.00 in rental arrears for February and April 2017 rent. The Landlord's agent testified that the Tenant is still occupying the rental unit and has not paid any of the rental arrears. Therefore, the Landlord now seeks to end the tenancy and recover unpaid rent.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement **whether or not** the landlord complies with the Act, unless the tenant has

right under the Act to withhold it or deduct from it. Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute it; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date.

Having examined the copy of the 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the 10 Day Notice was served to the Tenant personally on March 10, 2017 in accordance with Section 88(a) of the Act.

While the Tenant did make an Application to dispute the 10 Day Notice, the Tenant did not appear for the hearing to explain why she was disputing the 10 Day Notice. There is no evidence before me that the Tenant has paid the outstanding rent or had authority under the Act to withhold rent.

Therefore, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As the vacancy date on the 10 day Notice has now passed and the Tenant is still occupying the rental unit without paying rent, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

The Landlord is also awarded unpaid rent in the amount of **\$1,250.00**. As the Landlord has been successful in proving unpaid rent, pursuant to Section 72(1) of the Act the Landlord is also entitled to recover from the Tenant the **\$100.00** filing fee for the cost of this Application. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,350.00**.

As the Landlord already holds the Tenant's **\$45000** security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. The Landlord is issued with a Monetary Order for the outstanding balance of **\$900.00**. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any costs associated with enforcing the orders.

Conclusion

The Tenant has breached the Act by not paying rent. Therefore, the Landlord is granted a two day Order of Possession and may keep the Tenant's security deposit. The Landlord is issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$900.00.

The Tenant's Application is dismissed **without** leave to re-apply as she failed to appear for the hearing.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 20, 2017

Residential Tenancy Branch