



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This was an application by the landlord under the *Residential Tenancy Act* (the “Act”) for an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 17, 2017 (the “Notice”). The landlord also sought recovery of the application filing fee.

The landlord’s son attended the hearing with a witness. The tenant also attended the hearing. The hearing process was explained and the participants were asked at both the beginning and the end if they had any questions. The participants were given a full opportunity to be heard, to present their affirmed testimony and documentary evidence, to make submissions, and to respond to the submissions of the other party.

At the outset of the hearing the landlord’s son advised that the witness would speak to the tenant’s having an unauthorized pet. As this was not relevant to the landlord’s application the witness did not testify.

Service of the landlord’s application, notice of hearing, and supporting evidence was not at issue.

At the outset of the hearing the landlord sought to amend his monetary claim to include unpaid rent for May and June and I have accepted that amendment pursuant to the Rules of Procedure on the basis that the tenant can reasonably anticipate that unpaid rent will accrue over the months that he remains in the rental unit.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to recovery of the application filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. It records a fixed term tenancy with a start date of February 1, 2017, an end date of January 31, 2018 and monthly rent of \$1,800.00 due on the first of the month. It was signed on January 15, 2017 and indicates that a security deposit of \$900.00 was required on that same day.

The landlord's son testified that the tenant did not pay the security deposit as required. He further testified that the landlord and the tenant subsequently agreed that the tenant would pay only half of the monthly rent for February.

The landlord's son also stated that the tenant provided a cheque dated March 1 for \$1,800.00 for March rent and that this was return for insufficient funds. A copy of the cheque was in evidence, showing that it was deposited on March 27 and returned "nsf" on March 29.

According to the landlord's son the tenant then provided a cheque dated April 15 for \$3,600.00, meant to cover March and April's rent. That cheque was also returned "nsf." A copy of that cheque was also in evidence, showing that it was deposited on May 4 and returned "nsf" on May 8.

It was agreed that the tenant was served with the 10 Day Notice on April 17, 2017.

The tenant asserted that he paid the \$900.00 security deposit in cash but the landlord did not issue a receipt. The tenant further stated that he and the landlord agreed that February's rent would be discounted because of the state of the rental unit, and that he paid \$900.00 in cash for the month of February but again did not receive a receipt.

The tenant also said that he gave the landlord a cheque dated March 1, 2017 for the whole of March's rent, but that the landlord wanted cash, so he gave the landlord \$1,800.00 in cash on March 15. Again, the landlord did not provide a receipt. The tenant said that he then asked the landlord to return his cheque but the landlord instead

deposited in at the end of March. The tenant acknowledged that this cheque as returned on the basis that there were not sufficient funds in the tenant's account.

The tenant further testified that on April 15 he gave the landlord a cheque to cover rent for April and May. He acknowledged that this cheque was also returned "nsf." Ultimately, then, the tenant says that rent is owing for April and May but not for March.

The landlord has submitted text correspondence between himself and the tenant. In one text, dated April 17, 2017 the landlord or his agent tells the tenant that he needs to give the tenant "the 10 day notice to end tenancy because you have failed to pay for the months of February march and april if within 5 days you do not pay the rent I will apply for dispute resolution . . ." (reproduced as written). In another, dated April 23, 2017 the landlord or his agent states: "you have failed to pay the rent in the 5 days you were given . . . you must vacate the property on the 27th of april" (reproduced as written). The landlord's son argued that this would not make sense if the tenant's second cheque was actually meant to cover rent for April and May, as the tenant argues.

The tenant did not submit any documentary evidence in support of his submissions and did not apply to dispute the 10 Day Notice.

Analysis

It was agreed that the tenant was served with the 10 Day Notice on April 17, 2017. The tenant did not apply to dispute the notice, and the tenant admits that he has not paid rent for either April or May.

Section 46(5) of the Act provides that if a tenant does not apply to dispute a 10 Day Notice or pay arrears in full within five days of receipt, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must vacate the rental unit by that date.

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 April 27, 2017, the 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, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the Act. I find that the landlord's 10 Day Notice complies with section 52 of the Act.

Section 7(1) and 67 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. I prefer the landlord's evidence that rent is owing for March, April, and May. This is most consistent with the cheques and the text correspondence in evidence. As a result I find that the landlord is entitled to \$5,400.00 in rental arrears and loss of rental income for March, April, and May.

The landlord's application for June rent is premature, but the landlord may apply for June rent at a later date in the event the tenant remains in the rental unit.

I also accept the landlord's evidence that the tenant did not pay a security deposit. This is because I found the landlord's son to be a more credible witness based on the consistency of his testimony with the evidence filed and because the tenant did not have any documentary evidence of his payment of the deposit. It also seems likely in light of the tenant's payment history over this relatively short period of time that he simply did not have the means to pay the security deposit.

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

Conclusion

The landlord's application is allowed.

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,

it 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 **\$5,500.00**, with liberty to apply for additional monies owing for June. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this monetary order, it 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 Act and is final and binding unless otherwise indicated in the Act.

Dated: May 31, 2017

Residential Tenancy Branch