



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPN, MNR, MNDC, MNSD, FF

Introduction

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

- an order of possession for unpaid rent and the tenant has given notice to end the tenancy pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided undisputed affirmed testimony. Both parties confirmed that the landlord's agent (the landlord) served the tenant with the notice of hearing package in person on May 6, 2017. Both parties also confirmed that the landlord served the tenant with the submitted documentary evidence in person on May 23, 2017. The tenant did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that the tenant was properly served as per sections 88 and 89 of the Act.

During the hearing the landlord's agent, R.L. stated that the landlord's application selection requesting an order of possession as a result of a written notice to end tenancy was not given by the tenant and was made in error. As such, no further action is required. The hearing continued on the remaining issues listed below. During the hearing the landlord's agent, R.L. also cancelled a portion of the monetary claim seeking \$880.00 for unpaid rent for July 2017 and \$25.00 for late rent fee, lowering the monetary claim to \$1,810.00.

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, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

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 applicant's claim and my findings are set out below.

This tenancy began on May 1, 2011 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 16, 2011. The monthly rent was \$860.00 and a security deposit of \$430.00 was paid.

The landlord seeks an order of possession for unpaid rent and an amended monetary claim of \$1,810.00 for unpaid rent and late rent payments which consists of:

| | |
|----------|--------------------------|
| \$880.00 | Unpaid Rent, May 2017 |
| \$880.00 | Unpaid Rent, June 2017 |
| \$25.00 | Late Rent Fee, May 2017 |
| \$25.00 | Late Rent Fee, June 2017 |

The tenant confirmed that she understood that the landlord's claim was being lowered from \$2,715.00 to \$1,810.00.

Both parties confirmed that the landlord served the tenant in person with the 10 Day Notice dated May 6, 2017 which states in part that the tenant failed to pay rent of \$880.00 that was due on May 5, 2017 and sets out an effective end of tenancy date of May 15, 2017.

Both parties clarified that the monthly rent was due on the 1st day of each month, but that the landlord has established a practice of collecting rent on the 5th day of each month.

Although the landlord failed to identify or provide any evidence that a rent increase had occurred from the original \$860.00 per month to \$880.00, the tenant confirmed that she

did not pay the rent owed when it was due as a result of personal issues preventing her from working.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Based upon the undisputed affirmed evidence of both parties, I find that the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice dated May 6, 2017. The tenant had not made an application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. The tenant also confirmed in her direct testimony that rent was not paid. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 15, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided affirmed and uncontested testimony that the tenant has unpaid rental arrears totaling \$1,810.00 for unpaid rent and late rent fees. I find that the landlord has proven his entitlement to the rent arrears. However, the landlord relies upon section 7 of the signed tenancy agreement which states:

If rent payment is not received by the first day of the month, there will be a \$25.00 charge for each day late. [Reproduced as written]

Residential Tenancy Regulation 7, states in part,

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

As such, I find that section 7 of the landlord's signed tenancy agreement is contrary to the Act and find that this section is unenforceable as it calls for a \$25.00 per day late

rent charge. The landlord's request for \$50.00 (\$25.00 X2) in late rent charge(s) is dismissed.

The landlord is entitled to a monetary claim for the unpaid rent of \$1,760.00.

The landlord having been substantially successful in the application is entitled to recovery of the \$100.00 filing fee.

I also authorize the landlord to retain the \$430.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$1,430.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court of British Columbia and enforced as order(s) of those courts.

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: June 13, 2017

Residential Tenancy Branch