



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPC OPR CNC CNR MNR MNSD O OLC FF

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession for Unpaid Rent and/or for Cause pursuant to section 55; a monetary order for unpaid rent 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; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied pursuant to the Act for: cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46; cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47; authorization to obtain a return of his security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act* pursuant to section 62; and authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended this hearing and was given a full opportunity to be heard, to present testimony, and to make submissions with respect to his application. The tenant, however, did not attend although the 9:30 am teleconference continued until 9:13 am. With respect to the tenant's failure to attend this hearing, Rule 10.1 of the Rules of Procedure provides as follows:

The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the tenant's participation in this hearing to support his application, **I order the tenant's application dismissed without liberty to reapply.**

Issue(s) to be Decided

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

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

Is the landlord entitled to retain the tenant's security deposit?

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

Background and Evidence

The landlord submitted a copy of the residential tenancy agreement showing the tenancy began on October 12, 2016 as a month to month tenancy with a \$550.00 rental amount payable on the 31st of each month. The landlord testified that he no longer holds the security deposit as the tenant told him to apply it to a previously unpaid rental amount. The landlord was unable to provide any supporting documents with respect to his testimony that the tenant agreed to the use of the \$275.00 security deposit by the landlord.

The landlord has applied for an Order of Possession for Unpaid Rent for the month of April 2017. The landlord testified that it is unclear whether the tenant has vacated the rental unit. The landlord testified that the tenant's belongings are still inside the rental unit. The landlord testified that the locks have been changed and he needs to rekey the locks to have access to the unit.

The landlord provided undisputed testimony that the tenant did not pay rent of \$550.00 due on April 1, 2017. The landlord testified that the tenant is frequently late in paying rent. The landlord testified that the tenant paid rent late in February 2017, March 2017, April 2017 and May 2017. In each of those months, the landlord issued a 10 Day Notice to End Tenancy. He testified that, with respect to all these previous months, the tenant eventually paid the amount due but that, as of the date of this hearing, the landlord testified that the tenant had not paid any rent for the month of June 2017.

After the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent in April 2017 and a 1 Month Notice to End Tenancy for Cause in May 2017, the landlord testified that the tenant did not pay the April rent within 5 days of receiving the 10 Day Notice.

The landlord also applied for a monetary award of \$550.00 for June 2017 rent and an additional \$80.00. The landlord was unable to explain why the tenant owed \$80.00. I dismiss the \$80.00 claim by the landlord against the tenant.

Analysis

The tenant failed to pay the April 2017 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant made an application pursuant to section 46(4) of the *Act* and pursuant to section 47(4) of the *Act* to dispute both the 10 Day Notice issued by the landlord as well as the 1 Month Notice. The tenant did not attend in support of his application and I have dismissed his application without leave to reapply. In accordance with section 46(5) of the *Act*, the tenant's failure to pay the rent within five days led or to successfully dispute the notice to end his tenancy led to the end of his tenancy on the effective date of the notice. I find that the landlord is entitled to a 2 day Order of Possession as the effective date of the notice has passed.

Based on the undisputed evidence that the tenant resided in the rental unit during the month of June 2017, that the landlord has been unable to access the unit to clean or re-rent it and that the tenant will no longer reside in the rental unit, I find that the landlord is entitled to compensation for June 2017 rent in the amount of \$550.00. Although the landlord testified that he has otherwise allocated the tenant's security deposit, he did not have authority to do so and therefore, in accordance with section 72 of the Act, I allow the landlord to retain the tenants' security deposit in the amount of \$275.00. The landlord is subsequently entitled to a \$275.00 monetary order.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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.

I grant the landlord a monetary order in the amount of \$275.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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.

I dismiss the tenant's application without leave to reapply.

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 21, 2017

Residential Tenancy Branch