



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MND MNDC 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 utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the landlord's application for an order of possession and monetary order for unpaid rent, I am exercising my discretion to dismiss the remainder of the issues identified in the landlord's application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend her claim to include outstanding rent in the amount of \$950.00 that was payable on July 1, 2017. Although the tenant did not have prior notice of this claim, I find

that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

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

Background and Evidence

The tenancy began on October 15, 2016 with a monthly rent of \$950.00 payable on the 1st day of each month.

The landlord testified that on June 6, 2017 she personally served the tenant with the 10 Day Notice. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice. The landlord's application package also included a signed Mutual Agreement to End Tenancy with an effective date of June 30, 2017.

The landlord's monetary claim is for outstanding rent in the amount of \$1900.00. The landlord testified that this includes unpaid rent for the months of June and July 2017.

The tenant disputed service of the 10 Day Notice. The tenant stated she only received a Mutual Agreement to End Tenancy which she acknowledged signing. The tenant testified that rent was paid in full in cash but provided no rent receipts or any other supporting documentation such as bank account withdrawal records.

Analysis

I accept the landlord's testimony and signed proof of service witness statement and I am satisfied that the tenant was personally served with the 10 Day Notice on June 6, 2017 pursuant to section 88 of the Act. I also accept the landlord's testimony that outstanding rent was not paid within five days of the 10 Day Notice being served. The tenant did not provide sufficient evidence in support of the alleged cash payments.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the

tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, June 16, 2017. Alternatively, as the tenant signed a Mutual Agreement to End Tenancy, this tenancy would still be ending effective June 30, 2017 regardless of my findings on the 10 Day Notice and the non-payment of rent.

I find that the Notice issued on June 6, 2017 complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires that 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 that the tenant was obligated to pay monthly rent in the amount of \$950.00 but failed to pay rent for June and July 2017. I accept the landlord's claim for outstanding rent of \$1900.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$2000.00.

Conclusion

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

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$2000.00. 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.

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: July 06, 2017

Residential Tenancy Branch