



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the landlords' application for:

- an Order of Possession pursuant to section 46 of the *Act* for unpaid rent or utilities; and
- an application to keep all or part of the security deposit pursuant to section 38 of the *Act*.

Only the agent for the landlords, R.B., appeared at the hearing. He will herein be referred to as the "landlord." The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave undisputed sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities ("10 Day Notice") was handed to the tenant in person on May 3, 2017. I find that in accordance with sections 88 & 90 of the *Act*, the tenant was served with the 10 Day Notice on May 3, 2017.

The landlord testified that the tenant was given a copy of the Landlord's Application for Dispute Resolution hearing package ("dispute resolution hearing package") along with an evidentiary package in person on May 25, 2017. Pursuant to sections 88, 89 & 90 of the *Act* the tenant is deemed to have received both the landlord's application and evidentiary packages on May 25, 2017.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

Can the landlords retain the tenant's security deposit?

Background and Evidence

Undisputed testimony was provided by the landlord that this tenancy began on March 1, 2014. Rent was \$800.00, due on the first of the month. A \$400.00 security deposit paid at the outset of the tenancy continues to be held by the landlord.

The landlord stated that the tenant has only paid \$400.00 rent per month since October 2016. The landlord explained that he is seeking an Order of Possession based on unpaid rent for the time period of October 2016 to July 2017. The landlord is also hoping to retain the security deposit from the tenant as relief against the outstanding rent that remains unpaid.

Analysis

The tenant failed to pay the unpaid rent within five days of receiving the 10 Day Notice to End Tenancy on May 3, 2017. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 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 the effective date of the 10 Day Notice, this being May 13, 2017. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Pursuant to section 72(2)(b) of the *Act* the landlord may retain the tenant's security deposit against the outstanding rent that is due for the period from October 2016 to July 2017.

Conclusion

The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within 2 day of service of this Order, the landlord may enforce this Order in the Supreme Court of British Columbia.

The landlord may retain the tenant's security deposit to be put against unpaid rent.

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 10, 2017

Residential Tenancy Branch