



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, O, FF

Introduction

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

- an order of possession for unpaid rent and for breach of an agreement with the landlord, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant and "landlord XG" did not attend this hearing, which lasted approximately 19 minutes. Two of the three landlords, "landlord YC" and landlord BC ("landlord"), attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Landlord YC did not testify at this hearing, only landlord BC did. Landlord BC confirmed that he had authority to represent landlord YC and landlord XG as an agent at this hearing.

The landlord testified that the tenant was personally served with the landlords' application for dispute resolution hearing package on May 31, 2017 and the amendment to the landlords' application was served by registered mail on June 8, 2017. The landlord provided a Canada Post receipt and tracking number for the June 8, 2017 mailing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was personally served with the landlords' application on May 31, 2017, and deemed served with the amendment on June 13, 2017, five days after its registered mailing.

The landlord confirmed that the tenant was personally served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 1, 2017 ("10 Day Notice"), on June 2, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was personally served with the landlords' 10 Day Notice on June 2, 2017.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' Application to increase their monetary claim to include July 2017 rent of \$800.00. Since the landlords filed their application on May 31, 2017 and amendment on June 8, 2017, the July 2017 rent was not yet due. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlords would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlords' claim for increased rent, despite the fact that he did not attend this hearing.

As the landlords did not provide any evidence regarding their claim for "other unspecified remedies," I dismiss this portion of their application.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or breach of an agreement with the landlord?

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlords' claims and my findings are set out below.

The landlord testified regarding the following facts. This month-to-month tenancy began prior to the landlords purchasing the property in October 2009. The landlords assumed this tenancy from the former landlord. Monthly rent in the amount of \$800.00 is payable on the first day of each month. No security deposit was paid by the tenant to the landlord. A written tenancy agreement was not signed, as only a verbal agreement was reached. The tenant continues to reside in the rental unit.

The landlords issued the 10 Day Notice for unpaid rent of \$2,400.00 due on June 1, 2017. The landlord claimed that this included rent of \$800.00 for each month from April to June 2017, inclusive. The effective move-out date on the notice is June 12, 2017.

The landlords seek an order of possession, a monetary order of \$3,200.00 for unpaid rent, and recovery of the \$100.00 filing fee. The landlord said that the tenant failed to pay rent totalling \$3,200.00 from April to July 2017, inclusive.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on June 1, 2017, within five days of receiving the 10 Day Notice. 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 failure of the tenant to take either of the above actions within five days led to the end of this tenancy on June 12, 2017, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by June 12, 2017. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlords' 10 Day Notice complies with section 52 of the *Act*.

As I have issued an order of possession based on the 10 Day Notice, I do not need to examine the landlords' application for an order of possession for breach of an agreement with the landlord.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month, as per the parties' verbal agreement. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate landlords for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on landlords claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$3,200.00 from April to July 2017, inclusive. The landlord provided a written agreement signed by both parties indicating that the tenant could receive two months' free rent for April and May 2017 if he moved out by June 1, 2017. However, the tenant did not move out by June 1, 2017 and therefore, I find that the landlords are entitled to April and May 2017 rent from the tenant.

As the landlords were successful in this application, I find that they are entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlords' favour in the amount of \$3,300.00 against the tenant. 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.

The landlords' application for other unspecified remedies is dismissed 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: July 27, 2017

Residential Tenancy Branch