



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF; CNR, OPT

Introduction

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

- an Order of Possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2017 ("10 Day Notice"), pursuant to section 46; and
- an Order of Possession to the rental unit, pursuant to section 54.

The tenant did not attend this hearing, which lasted approximately 38 minutes. The landlord and his two agents (collectively "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. The landlord confirmed that his two agents had permission to speak on his behalf at this hearing.

The landlord testified that the tenant was served with the landlord's application for dispute resolution package on June 19, 2017 by way of registered mail. The landlord provided a Canada Post receipt and tracking number with his application. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's application on June 24, 2017, five days after its registered mailing.

The landlord testified that the tenant was personally served with the landlord's 10 Day Notice on June 2, 2017. The notice indicates an effective move-out date of June 2, 2017. In accordance with sections 88 and 90 of the Act, I find that the tenant was served with the landlord's 10 Day Notice on June 2, 2017. The tenant disputed this notice in her application.

Preliminary Issue – Amendment to Landlord's Application

Pursuant to section 64(3)(c) of the Act, I amend the landlord's application to increase his monetary claim to include July 2017 rent and utilities totalling \$1,350.00. Since the landlord filed his application on June 12, 2017 and amendment on July 11, 2017, the July 2017 rent was

not yet due. The landlord said that his amendment to his application was personally served on the tenant's daughter, who is approximately 25 years old, on July 26, 2017.

Although the landlord's amendment was served late to the tenant, less than 14 days before this hearing and contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*, 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 her to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay her rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend this hearing.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

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

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

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began on April 20, 2017. Monthly rent in the amount of \$1,250.00 and an additional \$100.00 for utilities, are payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord seeks an order of possession for unpaid rent. The landlord issued the 10 Day Notice for unpaid rent of \$1,350.00, due on May 1, 2017, which includes the monthly rent and utilities. The landlord explained that the tenant did not pay any rent or utilities for May, June or July 2017, in the amount of \$1,250.00 for each month, as well as utilities for all three months, totalling \$300.00. The landlord said that the tenant also failed to pay \$40.00 for April 2017 rent.

Analysis

The landlord provided undisputed evidence, as the tenant did not attend this hearing. The tenant failed to pay the full rent due on May 1, 2017, within five days of receiving the 10 Day Notice. The tenant filed an application to dispute the notice on June 7, 2017, pursuant to section 46(4) of the *Act*, within the five day time limit. However, the tenant did not appear at this hearing in order to provide evidence.

In accordance with section 46(5) of the *Act*, the failure of the tenant to pay the full rent within five days led to the end of this tenancy on June 12, 2017, the corrected 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 landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord 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 of \$40.00 for April 2017, and rent of \$1,250.00 and utilities of \$100.00 for each month from May to July 2017, inclusive. I find that the tenant owes the landlord rent and utilities totalling \$4,090.00 from April to July 2017, inclusive. The landlord provided confusing evidence regarding what was owed and what was paid by the tenant for April 2017 rent. I find that the tenant only owed \$40.00, not \$140.00, for outstanding rent for April 2017.

The landlord continues to hold the tenant's security deposit of \$625.00. No interest is payable on the deposit during this tenancy. Although the landlord did not apply to retain the deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$625.00 in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord 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 order the landlord to retain the tenant's entire security deposit of \$625.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$3,465.00 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 tenant's entire application 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 28, 2017

Residential Tenancy Branch