



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

ed to protect priva

DECISION

Dispute Codes MNR, OPC, FF, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and recovery of the filing fee, and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the building manager and agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Agent provided affirmed and undisputed testimony that the Application and Notice of Hearing were sent to the Tenant at the dispute address by registered mail on June 19, 2017, and provided me the following registered mail tracking number. The Agent also testified that the online tracking system for Canada Post shows that the item was signed-for by the Tenant on June 22, 2017. As a result, I find that the Tenant has been duly served.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary Issues

At the hearing I advised the Agent that the documentary evidence they had submitted to the Residential Tenancy Branch (the “Branch”) on August 8, 2017, August 9, 2017, and August 10, 2017, was late as it was not received by the Branch within the timeframe required in section 3.14 of the Rules of Procedure. I inquired how and when these documents had been served on the Tenant, and the Agent testified that they had been served by registered mail in two separate packages over approximately the same time

period. The Agent also provided me with the registration numbers for the service of these documents.

I advised the Agent that since neither the respondent nor the Branch had been served the documentary evidence within the timeframe required in section 3.14 of the Rules of Procedure, the documentary evidence would not be considered in the hearing, and the decision would be based on the affirmed oral testimony of the Agent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for repeated late payment of rent pursuant to sections 47 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to monetary compensation to recover the filing fee pursuant to section 72 of the *Act*?

Is the landlord entitled to keep all or a portion of the Security Deposit or Pet Deposit to offset any monetary compensation owed to the Landlord by the Tenant pursuant to section 72 of the *Act*?

Background and Evidence

The Agent did not provide a copy of a written tenancy agreement, however, they provided affirmed and undisputed testimony that the Tenant entered into a tenancy agreement with the Landlord, on October 1, 2009, at which time a \$500.00 Security Deposit and a \$200.00 Pet Deposit were paid. The Agent testified that the rent at the beginning of the tenancy was \$1000.00, due on the first of each month, and that as a result of incremental rent increases; the current monthly rent is \$1070.00.

The Agent provided affirmed and undisputed testimony that on May 29, 2017, a One Month Notice to End Tenancy for Cause (the "One Month Notice") was served on the Tenant for repeated late payment of rent. The landlord testified that the One Month Notice had an effective date of June 30, 2017, and was served on the Tenant by attaching a copy to the door of the rental unit on May 29, 2017, in the presence of a Witness.

The Agent provided affirmed and undisputed testimony that the Tenant had a long history of late payment of rent. The Agent testified that with the exception of the August 2017, rent, all other rent payments in the last year had been late. The agent testified that in the last year, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (a "10 Day Notice") had been issued on 2 separate occasions; once on May 29,

2017, and once on March 6, 2017. The Agent testified that although the Tenant paid the rent on both occasions within the time period allowed pursuant to section 46(4) of the *Act*, the rent was still late on those occasions.

The Agent also provided affirmed and undisputed testimony that since the date the Application was filed, the Tenant has paid all but \$40.00 of the outstanding rent amount of \$1065.00 listed on the Application.

Analysis

I have reviewed all relevant affirmed and undisputed oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the One Month Notice on June 1, 2017, 3 days after it was attached to the door of the rental unit.

Section 47(1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for cause and states the following in regards to late payment of rent:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(b) the tenant is repeatedly late paying rent;

Section 47(5) of the *Act* states the following with regards to the effect of the Notice:

47(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I find that the Tenant was obligated to pay the monthly rent of \$1070.00, on time and in full. The Residential Tenancy Policy Guideline (the "Policy Guideline") section 38 states that a Landlord may end a tenancy for repeated late payment of rent if the Tenant has made a minimum of three late rent payments in the preceding 12 month period. Based on the affirmed and undisputed testimony of the Landlord, I find the Tenant made a minimum of three late rent payments in the last 12 months. As a result, I find that the One Month Notice issued by the Landlord complies with the Policy Guideline definition of late payment of rent and that the Landlord had the right to issue the One Month Notice.

As I have already found that the Tenant has repeatedly failed to pay the rent on time as outlined above, and there is no evidence before me that the Tenant disputed the One Month Notice within that 10 day period, I find that the Tenant is conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the One Month Notice, July 31, 2017.

As a result, I find that the Landlord is entitled to an Order of Possession for repeated late payment of rent pursuant to sections 47 and 55 of the *Act*.

As there is no evidence before me to the contrary, I also find that the Tenant has failed to pay the rent owed in full as outlined above and the Landlord is entitled to monetary compensation in the amount of \$40.00 for the portion of August, 2017, rent that remains unpaid as of today's date. I also find that the Landlord is entitled to recover the \$100 filing fee pursuant to section 72 of the *Act*.

Pursuant to section 72(2) of the *Act*, I find that the Landlord is entitled to deduct \$140.00 from either the Tenant's security deposit or pet damage deposit.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. 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 and enforced as an Order of the Supreme Court of British Columbia. Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord monetary compensation in the amount of \$140.00 for \$40.00 in unpaid rent and recovery of the \$100.00 filing fee. Pursuant to section 72, I authorize the Landlord to retain this amount from any security deposit or pet damage deposit due to the Tenant.

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: August 18, 2017

Residential Tenancy Branch