



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNR MNSD MND FF CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent or damage pursuant to section 67.
- authorization to retain the tenant’s security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

While the landlord’s agent, RG (‘landlord), attended the hearing by way of conference call, the tenant did not. I waited until 11:12 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord’s agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the 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.

The landlord's agent gave sworn testimony that on June 23, 2017 their Application for Dispute Resolution hearing package ('Application') was personally served to the tenant. In accordance with section 89 of the *Act*, I find that the tenant duly served with the landlord's application. The landlord confirmed receipt of the tenant's Application and evidence. Accordingly, I find the landlord duly served with the tenants' Application and evidence in accordance with sections 88 and 89 of the *Act*.

The landlord's agent provided undisputed testimony that the tenant was personally served with the 10 Day Notice, with a corrected effective date of June 16, 2017, on June 6, 2017. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the 10 Day Notice on June 6, 2017.

Although the landlord applied for a monetary Order of \$1,000.00 in their initial claim, since they applied another \$1,000.00 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$1,000.00 to \$2,000.00 to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent or damage under the tenancy agreement, regulation, or *Act*?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

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

Background and Evidence

The landlord's agent gave undisputed testimony regarding the following facts. This month-to-month tenancy began on May 15, 2017 with monthly rent set at \$1,000.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$500.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on June 6, 2017 to the tenant as the tenant failed to pay rent for June 2017. A copy of the 10 Day Notice was included in the tenant's evidence. The landlord testified that the tenant has not paid any rent since the 10 Day Notice was issued to the tenant. The landlord testified that the tenants owe \$1,000.00 each for the months of June and July 2017. The total unpaid rent is \$2,000.00. The landlord is seeking an Order of Possession, as well as a Monetary Order for \$2,000.00.

Analysis

Section 55(1) of the *Act* reads as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In the absence of any evidence or submissions from the tenant, I order the tenant's application dismissed without liberty to reapply. I find that the 10 Day Notice complies with section 52 of the *Act*.

Based on my decision to dismiss the tenant's application for dispute resolution and pursuant to section 55(1) of the *Act*, I find that this tenancy ended on the corrected effective date of the 10 Day Notice, June 16, 2017. 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.

The landlord provided undisputed evidence that the tenant failed to pay the rent in full for the months of June and July 2017. Therefore, I find that the landlord is entitled to \$2,000.00 in arrears for the above period.

The landlord continues to hold the tenant's security deposit in the amount of \$500.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenant.

Conclusion

I dismiss the tenant's application without leave to reapply.

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 issue a \$1,600.00 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent and the filing fee, and also allows the landlord to retain the tenant's security deposit.

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.

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 8, 2017

Residential Tenancy Branch