



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was adjourned to a participatory hearing. The Landlord filed under the Residential Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), and legal counsel for the Landlord, who both provided affirmed testimony. The Tenant did not attend. The Agent and legal counsel were 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 a Proof of Service of Notice of Direct Request Proceeding as well as affirmed testimony in the hearing that the Application for Dispute Resolution by Direct Request, the Notice of Direct Request, and the evidence package were sent to the Tenant on July 14, 2017, by registered mail and provided a copy of the registered mail receipt in the evidence before me. The Agent and legal counsel for the Landlord also provided affirmed testimony that the Notice of Hearing, along with all documents previously served, was sent to the Tenant by registered mail on August 11, 2017, and provided the registered mail tracking number for my reference. As a result, I find that the Tenant has been duly served.

I have reviewed all evidence and testimony before me; however, I refer only to the relevant facts and issues in this decision.

Preliminary matters

In the hearing the Agent and the legal counsel for the Landlord provided affirmed and undisputed testimony that the Tenant continues to occupy the rental unit and that no further rent has been paid. The Agent and the legal counsel for the Landlord requested to amend the application to include loss of rent for July, 2017, and August, 2017. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. As a result, I have amended the Application to include outstanding rent for July, 2017, and August, 2017.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

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

Background and Evidence

The Landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) in the amount of \$6,600.00, dated June 30, 2017. The 10 Day Notice has an effective vacancy date of July 19, 2017, and indicates that it was served on the Tenant on July 30, 2017, by attaching a copy to the door of the Tenant's rental unit or by placing a copy in the Tenant's mailbox or mail slot.

The Landlord submitted a witnessed and signed Proof of Service of the 10 Day Notice (the "Proof of Service") which gave two separate dates for the service of the 10 Day Notice on the Tenant; May 30, 2017, and June 30, 2017. In the hearing the Agent provided affirmed and undisputed testimony that they are the witness named on the Proof of Service and that they made a clerical error when they recorded the date of service as May 30, 2017, instead of June 30, 2017. The Agent testified that June 30, 2017, is the correct date of service as that is the date they witnessed the Landlord attached a copy of the 10 Day Notice to the door of the Tenant's rental unit and place a separate copy in the Tenant's mailbox or mail slot.

The Agent testified that the tenancy began as a one year fixed-term tenancy on February 1, 2016, and became a month to month tenancy thereafter. The Agent testified that although the unit number is not listed as part of the location of the rental

unit on page two of the tenancy agreement, the unit number, which is 1007, is clearly listed on page one of the tenancy agreement, and pointed me to this document in the evidence before me.

The Agent and the legal counsel for the Landlord provided affirmed testimony that rent was due on the first of each month in the amount of \$1,950.00. The Agent testified that although the Landlord would sometimes allow a grace period of up to ten days for the payment of rent, during which time no late fee would be charged, the rent was still due on the first of each month and was considered late after that date.

The Agent provided affirmed and undisputed testimony that the Tenant has not paid any rent for March, May, June, July, and August, of 2017, and only partial rent for April, 2017, in the amount of \$1,200.00. The Agent provided a monthly breakdown in the documentary evidence before me showing the outstanding rent owed for March, 2017 – June, 2017.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or 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 to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was served with the 10 Day Notice on July 3, 2017, three days after it was attached to the door of the Tenant's rental unit and left in the Tenant's mailbox or mail slot.

I also find that the Tenant was obligated to pay the monthly rent of \$1,950.00, on time and in full each month. In the documentary evidence before me there was some discrepancy regarding the exact date upon which rent was due. In the hearing the Agent and the legal counsel for the Landlord provided affirmed testimony that rent was due on the first of each month in the amount of \$1,950.00.

As a result of the foregoing, I find that rent was due on the first of each month, and in any event, at least once per month during the rental period.

Based on the tenancy agreement, the Agent's affirmed and undisputed oral testimony, and the documentary evidence before me, I find that the Tenant owes \$10,500.00 in outstanding rent for the following periods:

- \$1,950.00.00 for March, 2017;
- \$1,950.00 - \$1,2000.00 = \$750.00 for April, 2017;
- \$1,950.00 for May, 2017;
- \$1,950.00 for June, 2017;
- \$1,950.00 for July, 2017;
- \$1950.00 for August 2017;

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the 5 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, July 19, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession and a Monetary Order in the amount of \$10,500.00, the amount owing as of today's date for unpaid rent.

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 the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$10,500.00 for rent owed for March, 2017 - August, 2017. 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 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 21, 2017

Residential Tenancy Branch