



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX CHECK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and the recovery of the filing fee, 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”), 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 these documents as explained below.

The Agent testified in the hearing that the Application and the Notice of Hearing were sent to the Tenant on August 18, 2017, by registered mail and provided a copy of the registered mail receipt in the evidence before me. As a result, I find that the Tenant was duly served on August 23, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

In the hearing the Agent withdrew their request for a Monetary Order for unpaid rent as they stated that the Tenant has now paid all outstanding rent. As a result, I have not considered any monetary claims for unpaid rent in my decision, and the Landlord’s application for a Monetary Order for unpaid rent and utilities is dismissed with leave to reapply.

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*?

Background and Evidence

The Agent submitted into the documentary evidence before me, a copy of a tenancy agreement signed on February 11, 2011. The tenancy agreement states that the tenancy, which began on February 1, 2011, is a fixed-term tenancy, with an end date of July 31, 2011. The tenancy agreement also contains a clause indicating that at the end of the fixed-term tenancy, the tenancy will continue on a month-month basis, starting August 1, 2011. The tenancy agreement states that rent is \$640.00 per month, payable on the first day of each month, and that a security deposit in the amount of \$320.00 was paid by the Tenant.

In the hearing the Agent testified that on September 1, 2016, the Tenant's rent increased from \$640.00 to \$660.00 and submitted a copy of a Notice of Rent Increase dated May 20, 2016.

In the hearing the Agent testified that the Tenant did not pay their rent as required on August 1, 2017, and that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was subsequently issued.

The 10 Day Notice in the documentary evidence before me, dated August 3, 2017, indicates that the Tenant failed to pay rent in the amount of \$660.00 that was due on August 1, 2017. The 10 Day Notice has an effective vacancy date of August 16, 2017, and indicates that it was posted to the door of the Tenant's rental unit on August 3, 2017. The 10 Day Notice states that the Tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The Agent also submitted into the documentary evidence before me, a witnessed and signed Proof of Service Notice to End Tenancy (the "Proof of Service"), indicating that the 10 Day Notice was served in the manner described above.

In the hearing the Agent testified that the Tenant continues to reside in the rental unit and that the following payments have been made by the Tenant:

- \$500.00 paid August 14, 2017, towards the outstanding rent for August;
- \$160.00 paid September 8, 2017, for the balance of August rent;
- \$660.00 paid September 8, 2017, for use and occupancy of the rental unit for September.

As a result of the above, the Agent testified that the Tenant does not currently owe any rent; however, they are still seeking an Order of Possession as the Tenant failed to pay the rent owed for August, 2017, in full, within five days of the service of the 10 day Notice.

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 August 6, 2017, three days after it was posted to their door.

I also find that the Tenant was obligated to pay the monthly rent in the amount of \$660.00, on time and in full each month.

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 five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five 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, August 16, 2017, and the Landlord is entitled to an Order of Possession.

I also find that the Landlord is entitled to recover the \$100 filing fee pursuant to section 72 of the *Act*.

Conclusion

The Landlord is granted an Order of Possession, which will be effective **two (2) days after service of this order** on the Tenant. This Order of Possession may be filed in and enforced as an order of the Supreme Court of British Columbia. As the Landlord withdrew his monetary claim, it is dismissed with leave to reapply.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. 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: September 21, 2017

Residential Tenancy Branch