



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNSD MNDC MNR FF

Introduction

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

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed or losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord's agent, WS, attended the hearing by way of conference call, the tenant did not. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

WS testified that the tenant was served with the landlord's application for dispute resolution hearing package and evidence on June 23, 2017 by way of registered mail. The landlord provided a Canada Post tracking the hearing. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on June 28, 2017, five days after its registered mailing.

WS testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") on June 2, 2017, by posting the notice on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on June 5, 2017, three days after posting.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent and losses?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The landlord's agent, WS, testified regarding the following facts. This month-to-month tenancy began on October 7, 2016, with monthly rent in the amount of \$1,300.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$650.00 for this tenancy. The tenant continues to reside in the rental unit.

The landlord issued a 10 Day Notice to End Tenancy, dated June 2, 2017 as the tenant failed to pay rent due on June 1, 2017. The landlord's agent testified that the tenant owes \$1,300.00 in outstanding rent each for the months of May 2017 through to August 2017, plus \$125.00 in late fees. The total outstanding rent and late fees are \$5,325.00. The landlord is seeking an Order of Possession as well as monetary compensation for the unpaid rent, late fees, and recovery of the filing fee.

Analysis

The landlord's agent provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the rent in full, within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on June 15, 2017, the 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 15, 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*.

The landlord's agent provided undisputed evidence that the tenant failed to pay the outstanding rent and late fees in the amount of \$5,325.00. Therefore, I find that the landlord is entitled to \$5,325.00 in outstanding rent and late fees for this tenancy.

The landlord continues to hold the tenant's security deposit of \$650.00. 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.

As the landlord was successful in their application, I find that they are entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenant(s) 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 \$4,775.00 Monetary Order in favour of the landlord, which allows the landlord to recover the unpaid rent and late fees, the filing fee for this application, and also allows the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 20, 2017

Residential Tenancy Branch