



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”), 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 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 28, 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 with the Application and Notice of Direct Request Proceeding on August 2, 2017, five days after the registered mailing.

The Agent also provided affirmed testimony that the Notice of Hearing was sent to the Tenant by registered mail on August 4, 2017, 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 with the Notice of Hearing on August 9, 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. I refer only to the relevant facts and issues in this decision.

Preliminary matters

In the hearing the Agent requested to amend their application to include recovery of the \$100.00 filing fee. 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, and section 72(1) of the *Act* states that the director may order payment or repayment of a fee under section 59(2)(c) [*starting proceedings*] by one party to a dispute resolution proceeding to another party. As a result, I find it reasonable to amend the Landlord's application to include the recovery of the filing fee and the request for an amendment is granted.

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*?

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

Background and Evidence

In the hearing the Agent testified that the tenancy began as a month to month Tenancy on September 15, 2014, and that rent was due on the first of each month in the amount of \$950.00. The Agent also testified that a security deposit in the amount of \$475.00 was paid by the Tenant on September 10, 2014, and submitted a copy of the tenancy agreement into the evidence before me confirming the conditions of the tenancy as stated above.

The Agent also testified that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated July 4, 2017, was served on the Tenant on July 4, 2017, by attaching a copy to the door of the Tenant's rental unit in the presence of a witness. The Agent submitted into the documentary evidence before me a copy of the 10 Day Notice which has an effective vacancy date of July 14, 2017, and a witnessed

Proof of Service Notice to End Tenancy (the “Proof of Service”) which indicates that the 10 Day Notice was served in the manner described above.

The Agent provided both a Monetary Order Worksheet (the “Worksheet”) and an invoice into the documentary evidence before me in support of the Landlord’s claim for outstanding rent. However, the information contained in the Worksheet and the Invoice regarding the outstanding rent owed and paid by the Tenant are inconsistent with one another. The Invoice also shows an unexplained balance forward at the end of May 2017, in the amount of \$3,600.00.

The Agent was provided an opportunity in the hearing to explain the discrepancies between the Worksheet and the invoice and to provide a detailed account of how the balance forward amount of \$3,600.00 was calculated. The Agent testified that they did not have the detailed payment records before them and therefore they could not provide any further detail.

The Agent also testified that the Tenant is believed to have moved out of the rental unit on August 23, 2017; however, the Landlord is still seeking an Order of Possession in relation to the rental unit.

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 heard affirmed testimony, and reviewed all relevant documentary evidence which was served in accordance with sections 88 and 90 of the *Act*, and I find that the Tenant was served with the 10 Day Notice on July 7, 2017, three days after it was posted to the door of the Tenant's rental unit.

I find that the Tenant was obligated to pay the monthly rent in the amount of \$1200.00, as per the tenancy agreement. There is some ambiguity regarding the *exact* amount of rent owed and paid; however, based on the testimony of the Agent and the documentary evidence before me, I am satisfied that on the day the 10 day Notice was issued, the Tenant owed at least \$0.01 in rent. As a result, I find that the 10 Day Notice is valid, pursuant to Section 46(1) of the *Act*.

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 corrected effective date of the 10 Day Notice, July 17, 2017, and the Landlord is entitled to an Order of Possession.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

As noted above, I am not satisfied that the landlord is able to establish the value of the loss and as a result, I dismiss their monetary claim without leave to reapply.

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 and 72 of the *Act*, I authorize and order the Landlord to retain \$100.00 of the security deposit paid by the Tenant to the Landlord in recovery of the filing fee. The remainder of the security deposit is to be dealt with in accordance with the *Act*.

As I am not satisfied that the landlord is able to establish the value of the loss, I dismiss their monetary claim for unpaid rent without leave to reapply.

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 1, 2017

Residential Tenancy Branch