



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord 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 Landlords, who both provided affirmed testimony. The Tenant did not attend. The Landlords 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 Landlords testified in the hearing that the Application, the Notice of Hearing, and the evidence package were served personally on the Tenant on August 29, 2017. As a result, I find that the Tenant was duly served August 29, 2017, the date the documents were personally served on them.

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 Landlords testified that the Tenant continues to occupy the rental unit and that they have not paid any rent since the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) was issued. Subsequently the Landlords

requested to amend the Application to include loss of rent for September, 2017. They also requested to amend the application to include recovery of the 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, including when the amount of rent owing has increased since the time the Application was made. As a result, the Application is amended to include loss of rent for September, 2017. I also find that Tenant could reasonably have anticipated that the Landlords would seek repayment of the \$100.00 filing fee if they were successful in their Application, and note that the Tenant could have appeared today to object, but did not attend. As a result, I find it reasonable to amend the Application to include the recovery of the \$100 filing fee, and the Application is amended accordingly.

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 and the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The Landlords provided in the documentary evidence before me, a month to month tenancy agreement for a tenancy commencing March 1, 2016, with a monthly rent of \$875.00. The tenancy agreement did not contain a date on which the rent was due but the Landlords testified that the understanding between all parties was that the rent was due on the first day of each month. The Tenancy agreement also indicates that a \$437.50.00 security deposit and a \$437.50 pet damage deposit was paid by the Tenant to the Landlords. In the hearing the Landlords testified that they still hold the above noted security deposit; however, they do not wish the arbitrator to offset any monetary compensation owed by the Tenants to the Landlords as a result of this decision with either of these deposits, as they may need to make a subsequent claim for damages.

The Landlords testified that the Tenant currently owes \$1925.00 in outstanding rent; \$175.00 for June, 2017, and \$875.00 per month for August and September, 2017. The Landlords testified that since the 10 Day Notice was issued, the Tenant has incurred further rent for September, 2017, and that no payments have been made by the Tenant.

The 10 Day Notice dated August 2, 2017, has an effective vacancy date of August 15, 2017, and shows \$1050.00 owing in outstanding rent as of August 2, 2017. In the hearing the Landlords testified that the 10 Day Notice was posted to the door of the Tenant's rental unit on August 2, 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.

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 5, 2017, three days after it was attached to their door. I also find that the Tenant was obligated to pay the monthly rent of \$875.00, 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 15, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession and monetary compensation in the amount of \$2025.00; \$1925.00 for rent owed as of today's date, and \$100.00 for the recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are 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 and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$2025.00. The Landlords are 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 13, 2017

Residential Tenancy Branch