



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 by Direct Request (the “Application”) 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 the Landlord, both of whom provided affirmed testimony. The Tenant did not attend. The Agent and Landlord 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 these documents as explained below.

The Landlord provided a Proof of Service of Notice of Direct Request Proceeding as well as testimony in the hearing that the Application and the Notice of Direct Request were sent to the Tenant on August 16, 2017, by registered mail. The Landlord also provided a copy of the registered mail receipt in the evidence before me. As a result, I find that the Tenant was duly served the Application and the Notice of Direct Request Proceeding on August 21, 2017, five days after they were sent by registered mail.

The Landlord and the Agent also testified that the Notice of Hearing, along with all the evidence and documents previously served, was sent to the Tenant by registered mail on August 23, 2017, and provided a copy of the registered mail receipt in the evidence before me. Further to this, The Landlord stated that a duplicate package was also personally served on the Tenant by a Bailiff on August 23, 2017. As a result, I find that the Tenant was duly served with the Notice of Hearing on August 23, 2017, the date it was personally served on them. In any event, I also find that the Tenant would have been served on August 28, 2017, five days after the Notice of Hearing was sent by registered mail.

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 and the Landlord testified that the Tenant continues to occupy the rental unit and that the amount of rent has increased since the time the Application was filed. As a result, the Landlord requested to amend their Application to include the additional rent owing. 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 was made. As a result, I have amended the Application to include the additional rent owing since the Application was filed.

The Landlord also requested to amend their application to include the recovery of the \$100.00 filing fee and the retention of the Tenant's security deposit to offset any money owed from the Tenant to the Landlord. Section 72 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. It also states that if the director orders a Tenant to pay any amount to the Landlord, the amount may be deducted from any security deposit or pet damage deposit due to the Tenant. Pursuant to section 72, the Application is amended.

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 landlord submitted in the documentary evidence before me, a copy of a tenancy agreement signed on December 20, 2011, for a one year fixed-term tenancy commencing January 1, 2012. The tenancy agreement states that if the Tenant does not give notice to move out at the end of the tenancy, the tenancy will continue on a month-to-month basis.

The tenancy agreement states that rent in the amount of \$1,250.00 is due on the first day of each month, and provides for a service charge for late payments and returned or non-sufficient fund (NSF) cheques. The tenancy agreement also states that a security deposit in the amount of one half month's rent is payable in advance and the landlord testified that \$625.00 was paid

by the Tenant, which the Landlord still holds. Further to this, the Landlord and the Agent testified that there have been incremental rent increases over the course of the tenancy and that the current monthly rent is \$1,376.00, including \$10.00 for parking.

The Landlord and Agent testified that the Tenant did not pay the rent in full and on time as required, and that as of June 1, 2017, they owed \$1,399.00. As a result, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was issued on June 20, 2017.

The Landlord submitted a copy of a 10 Day Notice in the amount of \$1,399.00, dated June 20, 2017. The 10 Day Notice has an effective vacancy date of July 2, 2017, and indicates that it was served on the Tenant on July 20, 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 testified in the hearing that it was taped to the door of the Tenant's rental unit.

The Landlord testified that on, July 6, 2017, the Tenant made a partial rent payment in the amount of \$1,300.55 and that rent and fees in the amount of \$4,261.45 remain outstanding as follows:

- \$98.45 owed towards the amount shown on the 10 Day Notice dated June 20, 2017;
- \$1,376.00 for July rent;
- \$25.00 NSF bank fee for the return of July's rent cheque;
- \$1,376.00 for August rent;
- \$10.00 NSF bank fee for the return of August's rent cheque;
- \$1,376.00 for September rent.

The Landlord testified that when the Tenant did not pay the \$98.45 balance owed or the rent for July, 2017, a second 10 Day Notice was issued on July 13, 2017. The Landlord submitted a copy of the 10 Day Notice in the amount of \$1509.45, dated July 13, 2017. The 10 Day Notice has an effective vacancy date of July 26, 2017, and indicates that it was served on the Tenant on July 13, 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 testified in the hearing that it was taped to the door of the Tenant's 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 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 June 23, 2017, three days after it was attached to the door of the Tenant's rental unit. I also find that the Tenant was required to pay rent in the amount of \$1,376.00 on time and in full each month.

Based on the testimony of the Landlord and Agent and the documentary evidence before me, and in the absence of evidence 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 3, 2017.

Pursuant to sections 67 and 72 of the *Act*, I find that the Landlord is entitled to a Monetary Order in the amount of \$3,736.45; which includes \$100.00 for the recovery of the filing fee, and \$4,261.45 for unpaid rent and fees, less the \$625.00 security deposit paid by the Tenant.

As I have already found above that the tenancy is ended as a result of the 10 Day Notice dated June 20, 2017, I find that I do not need to address the validity of the 10 Day Notice dated July 13, 2017 ; and I have therefore made no findings of fact or law with regards to it.

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

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$3,736.45**; 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 27, 2017

Residential Tenancy Branch