



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

On September 14, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords agent ("the Landlord") attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served the Notice of Hearing and Application on September 18, 2017, by registered mail. The Landlord provided a registered mail tracking number as proof of service.

I find that the Tenant has been duly served with the Notice of Hearing in accordance with sections 89 and 90 of the *Residential Tenancy Act* ("the Act").

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

The Landlord amended the Application on September 18, 2017, to include a request for an order of possession based on a 2 Month Notice To End Tenancy For Landlord's Use Of Property. The Landlord testified that the amended application was served to the Tenant by registered mail.

Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on March 1, 2016, as a month to month tenancy. Rent in the amount of \$850.00 was to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00.

The Landlord testified that the Tenant was served a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 15, 2017. The 2 Month Notice has an effective date of June 1, 2017. The Landlord provided a proof of service document that states that 2 Month Notice was left in the mailbox of the Tenant's residence on March 15, 2017. The document indicates that the Landlord knocked on the door but the Tenant did not answer.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice. If the Tenant does not file an Application, move or vacate, the Landlord can apply for an Order of Possession that is enforceable through the court.

There is no evidence before me that that the Tenant made an application to dispute the 2 Month Notice.

The Landlord also submitted that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 15, 2017.

The Landlord testified that the Tenant failed to move out of the rental unit on June 1, 2017, and the Landlord has suffered a loss of rent for a number of months.

The Landlord testified that the Tenant owes \$4,000.00 for the loss of rental income for the following months:

- June 2017, in the amount of \$800.00
- July 2017, in the amount of \$850.00
- August 2017, in the amount of \$850.00
- September 2017, in the amount of \$650.00
- October 2017, in the amount of \$850.00

The Landlord testified that the Tenant paid \$200.00 towards the rent arrears in September and that a receipt for use and occupancy only was issued to the Tenant.

The Landlord seeks an order of possession for the rental unit and a monetary order for the loss of rent in the amount of \$4,000.00

The Landlord is seeking to keep the security deposit of \$450.00 in partial satisfaction of the claim for the loss of rent.

The Landlord is seeking to recover the \$100.00 fee for the cost of the hearing.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant received the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 15, 2017, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

I find that the Tenant failed to move out of the rental unit on the effective date of the 2 Month Notice and the Landlord has suffered a loss of rent.

I find that the Tenant owes the Landlord \$4,000.00 for the loss of rent.

I order that the Landlord can keep the security deposit in the amount of \$450.00 in partial satisfaction of the claim for unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,100.00 comprised of \$4,000.00 for a loss of rent for the above mentioned dates and the \$100.00 fee paid by the Landlord for this hearing.

After offsetting the security deposit of \$450.00 towards the claim of \$4,100.00, I find that the Landlord is entitled to a monetary order in the amount of \$3,650.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Since the tenancy has ended due to the tenant's failure to dispute the 2 Month Notice, there is no need to consider whether the tenancy has ended due to the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 15, 2017.

Conclusion

The Tenant was served with the Notice of Hearing and failed to attend the hearing. The Tenant was served a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 15, 2017, and did not dispute the Notice or move out on the effective date of the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Tenant did not pay the rent owing under the tenancy agreement and the Landlord suffered a loss of rent in the amount of \$4,000.00.

I order that the Landlord can keep the security deposit in the amount of \$450.00 in partial satisfaction of the claim for the loss of rent.

The Landlord is granted an order of possession effective 2 days after service on the Tenant and I grant a monetary order for the unpaid rent and the cost of the filing fee in the amount of \$3,650.00.

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: October 27, 2017

Residential Tenancy Branch