



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 458349 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, 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 unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's agent (the landlord) attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence in person on August 9, 2017 and has provided a signed statement of receipt as confirmation. I accept the undisputed evidence of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an order of possession and a monetary order for unpaid rent.

The landlord claims that on July 21, 2017, the landlord issued the 10 Day Notice dated July 21, 2017 to the tenant which sets out an effective date of July 31, 2017. The 10 Day Notice set out that the tenant failed to pay \$1,650.00 in rent that was due on July 1, 2017. The landlord has also submitted in support of this application a copy of the 10 Day Notice dated July 21, 2017 signed by the tenant as received and a proof of service document completed with a witness confirming service in this manner.

The landlord claims that monthly rent is \$800.00 and that the tenant failed to pay rent for June, July, August, September and October as of the date of this hearing totalling, \$4,000.00. The landlord clarified that he was also seeking \$50.00 for the late payment of rent on two occasions at \$25.00/each. The landlord stated that there was no signed tenancy agreement detailing a late fee.

The landlord stated that since the 10 day notice was served, no rent has been paid and that the landlord has not been served with an application for dispute of the notice by the tenant.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by July 31, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

The landlord has provided undisputed affirmed testimony that the tenant has unpaid rental arrears totaling \$4,000.00. Although the landlord applied for \$1,650.00 for rental arrears, I find that as the tenant has continued to occupy the rental premises for the entire 5 month period that the landlord is entitled to the loss of rental income totalling, \$4,000.00 for the period June 2017 to October 2017 inclusive. I find that the landlord has proven his entitlement to the rent arrears. The landlord is entitled to a monetary order for the unpaid rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord is granted an order of possession for unpaid rent.

The landlord is granted a monetary order for \$4,100.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as orders of those courts.

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