



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on July 24, 2017 for an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

The Landlord and legal counsel for the Landlord appeared for the hearing. Only the Landlord provided affirmed testimony through his legal counsel. There was no appearance for the Tenant during the 12 minute hearing or any submission of evidence prior to this hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord testified that the Tenant was served with a copy of the Application and the Hearing Package on July 25, 2017 by registered mail. The Landlord provided the Canada Post tracking number into oral evidence to verify this method of service. This number is documented on the front page of this Decision.

The Landlord testified that the Tenant's wife, who lives with the Tenant in the rental unit, received and signed for the documents on July 26, 2017. In the absence of the Tenant to dispute this, I find the Landlord effected service on the Tenant pursuant to Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord explained that since the time he had filed the Application, the Tenant has also failed to pay rent for August, September and October 2017 and requested recovery of these amounts from the Tenant during the hearing.

Section 64(3) (c) of the Act allows an Application to be amended. In addition, Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states:

“In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.”

[Reproduced as written]

Based on the foregoing, I amended the Landlord's Application to consider the monetary claim for unpaid rent which remains outstanding at the time of this hearing.

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 utilities?

Background and Evidence

The Landlord testified that this tenancy began on May 1, 2017 for a fixed term of one year. Rent under the signed tenancy agreement is \$2,550.0 payable by the Tenant on the first day of each month. The Landlord also testified that the Tenant was responsible for paying hydro in this tenancy. No security deposit was taken for this tenancy.

The Landlord testified that the Tenant was in rental arrears for June 2017 rent in the amount of \$70.00. In addition, the Tenant failed to pay rent for July 2017. As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) on July 6, 2017 by posting it to the Tenant's door.

The Landlord provided the 10 Day Notice into evidence which shows a vacancy date of July 16, 2017. The Landlord also provided a Proof of Service document, which was signed by a witness to verify service of the 10 Day Notice. In addition, the Landlord also provided a photograph of the 10 Day Notice posted to the door.

The Landlord testified that the Tenant has failed to pay monthly rent since being served the 10 Day Notice.

The Landlord testified that he received a disconnection notice from the hydro company on June 20, 2017 stating that if the utility arrears were not paid, the hydro to the rental unit would be cut off. The Landlord testified that the hydro payment of \$190.95 was paid by him on June 30, 2017 to ensure the Tenant received essential services. Therefore, the Landlord now seeks recovery of this amount.

Analysis

Section 26(1) of the Act requires a tenant to pay rent under a tenancy agreement **whether or not** the landlord complies with the Act.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute it; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the date to which the Notice relates.

Having examined the 10 Day Notice, I find that the contents complied with the requirements of Section 52 of the Act. I also accept the undisputed evidence that the Tenant was served with the 10 Day Notice on July 6, 2017 by posting it to the rental unit door pursuant to Section 88(g) of the Act.

Section 90(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. Therefore, I find the Tenant was deemed to have received the 10 Day Notice on July 9, 2017. As a result, pursuant to Section 53 of the Act, I correct the vacancy date on the 10 Day Notice to July 19, 2017.

I accept the undisputed evidence of the Landlord before me that the Tenant has failed to pay rent for July, August, September and October 2017 and also owes a balance of \$70.00 for June 2017 rent.

As the Tenant has failed to pay rent or disputed the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy has ended. As the corrected vacancy date has now passed and the Tenant is residing in the rental unit without paying rent, the Landlord is entitled to a two day Order of Possession.

This order must be served to the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

I also accept the Tenant has not paid utilities as required under this agreement in the amount of \$190.95. As a result, I award the Landlord a total amount of unpaid rent and utilities of \$10,460.95 $((\$2,550.00 \times 4) + \$70.00 + \$190.95)$.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of the Application pursuant to Section 72(1) of the Act.

Therefore, the Landlord is granted a Monetary Order for the amount of \$10,560.95. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court.

Copies of both orders are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenant has breached the Act by not paying rent and utilities in this tenancy. Therefore, I grant the Landlord an Order of Possession effective two days after service on the Tenant. The Landlord is also granted a Monetary Order in the amount of \$10,560.95.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 03, 2017

Residential Tenancy Branch