



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPR, MNR, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing via conference call and provided undisputed affirmed testimony with the assistance of her sister/agent. 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 via Canada Post Registered Mail on July 26, 2017 and have provided copies of the Canada Post Customer Receipt Tracking labels and receipts as confirmation. The landlord also provided undisputed evidence that the tenant was served with the amendment to the application for dispute via Canada Post Registered Mail on September 12, 2017. The landlord has also submitted a copy of the Canada Post Customer Receipt Tracking label as confirmation. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been 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?

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss 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.

This tenancy began on August 3, 2016 on a fixed term tenancy until August 2, 2017 as shown by the submitted copy of the signed tenancy agreement dated August 3, 2016. The monthly rent is \$900.00 payable on the 3rd day

The landlord seeks an order of possession as a result of a mutual agreement to end tenancy and for unpaid rent. The landlord also seeks a monetary claim for unpaid rent of \$4,000.00 which consists of:

June \$600
July \$700
August \$900
September \$900
October \$900

The landlord claims that the tenant failed to vacate the rental unit on August 3, 2017 as per a mutual agreement to end tenancy dated March 26, 2017. The landlord has provided a copy of the mutual agreement dated March 26, 2017 in confirmation of the end of tenancy signed by both the landlord and the tenant.

The landlord also stated that the tenant was served with the 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice) dated September 3, 2017 by posting it to the rental unit door on September 3, 2017. The 10 Day Notice sets out that the tenant failed to pay rent totalling, \$3,100.00 that was due on September 3, 2017. The 10 Day Notice also noted the unpaid rent as:

June \$600
July \$700
August \$900
September \$900

The landlord claims that since this notice was served the tenant still occupies the rental unit and has not paid any rent as of the date of this hearing.

Analysis

Section 55 (2) (d) of the Residential Tenancy Act states a landlord may request an order of possession of a rental unit if the landlord have agreed in writing that the tenancy is ended.

In this case, I accept the landlord's undisputed evidence that a mutual agreement was entered into on March 26, 2017 to end the tenancy on August 3, 2017 as per the submitted copy of the signed mutual agreement. As such, the landlord has established an entitlement for an order of possession.

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.

In this case, the landlord's amendment seeks an order of possession as a result of a 10 Day Notice for Unpaid Rent dated September 3, 2017. I accept the undisputed affirmed evidence of the landlord and find that the tenant was properly served with the 10 Day Notice dated September 3, 2017 by posting it to the rental unit door. 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 September 13, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession.

As for the monetary claim of the landlord, I accept the undisputed evidence of the landlord that a partial payment of rent was made in June of \$300.00 followed by a partial payment of rent in July of \$200.00 with no further rent payments made. Based upon the landlord's 10 Day Notice and the direct testimony of the landlord, I find that the tenant failed to pay rent of \$4,000.00. On this basis, I find that the landlord is entitled to a monetary claim of \$4,000.00 in unpaid rent.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession based upon the mutual agreement to end tenancy and the 10 Day Notice for Unpaid Rent.

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

These orders must be served upon the tenant. Should the tenant fail to comply with these 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 05, 2017

Residential Tenancy Branch