



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution hearing package on August 21, 2017. The landlord provided a signed witness statement from "TM" indicating that TM saw the landlord's worker, "B," personally serve the tenant with the application on that date. In accordance with section 89 of the *Act*, I find that the tenant was personally served with the landlord's application on August 21, 2017.

The landlord confirmed that the tenant was personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 3, 2017 ("10 Day Notice"), on the same date. The landlord claimed that a copy was also posted to the tenant's door on the same date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was personally served with the landlord's 10 Day Notice on August 3, 2017 and again on August 6, 2017, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase her monetary claim to include September and October 2017 rent of \$800.00 each.

Since the landlord filed her application in August 2017, the September and October 2017 rent was not yet due. The tenant is aware that rent is due on the first day of each month. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that he did not attend this hearing.

Issues 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?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

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

The landlord testified regarding the following facts. This month-to-month tenancy began prior to the landlord purchasing the property in June 1, 2017. The landlord assumed this tenancy from the former landlord. A written tenancy agreement was not signed by the tenant and the landlord when the landlord assumed this tenancy. Monthly rent in the amount of \$800.00 is payable on the first day of each month. No security deposit was received by the landlord from the former landlord or the tenant. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice for unpaid rent of \$800.00 due on August 1, 2017. The effective move-out date on the notice is August 14, 2017. The landlord stated that the tenant paid \$1,200.00 on September 16, 2017, which included \$800.00 for August 2017 rent and \$400.00 towards September 2017 rent. She claimed that the balance owed for September 2017 rent is \$400.00 and the balance owed for October 2017 is \$800.00.

The landlord seeks an order of possession, a monetary order of \$1,200.00 for unpaid rent, and recovery of the \$100.00 filing fee.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on August 1, 2017, within five days of receiving the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on August 14, 2017, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by August 14, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which in this case required the tenant to pay by the first day of each month, as per the parties' verbal agreement.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent totalling \$1,200.00 from September to October 2017, inclusive. Therefore, I find that the landlord is entitled to \$1,200.00 in rental arrears from the tenant.

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

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,300.00 against the tenant. 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: October 20, 2017

Residential Tenancy Branch