



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent, an Order of Possession, and recovery of the filing fee.

The hearing was originally convened by telephone conference call on September 25, 2017, at 9:00 AM and was attended by the Landlord and the Tenant, all of whom provided affirmed testimony. The hearing was adjourned due to issues relating to the service of documents and questions relating to the tenancy. An interim decision was made on September 27, 2017, and the reconvened hearing was set for October 23, 2017, at 1:00 PM. A copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”).

The hearing was reconvened by telephone conference call on October 23, 2017, at 1:00 PM. The Landlord attended at the scheduled time, ready to proceed. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Landlord testified that the Tenant was sent the Application, the original Notice of Hearing, the Amendment to an Application for Dispute Resolution, and their evidence package by registered mail on August 24, 2017. The Landlord provided the registered mail tracking number and a copy of the registered mail receipt for my consideration. As a result, I find that Tenant was deemed served the above noted documents on

August 29, 2017, five days after they were sent by registered mail.

On September 27, 2017, the Residential Tenancy Branch sent the Landlord and the Tenant a copy of the new Notice of Hearing, indicating that the hearing was to be reconvened on October 23, 2017, at 1:00 PM. The Notice of Hearing was sent to each party at the address provided and in the manner requested at the original hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary matters

The Landlord submitted an Amendment to an Application for Dispute Resolution (the "Amendment") to the Branch on August 24, 2017, indicating that the amount of the monetary claim had increased and seeking unpaid rent for September, 2017. The Landlord testified that the Amendment was sent to the Tenant on August 24, 2017, by registered mail. The Application was amended accordingly.

At the outset of the hearing the Landlord testified that the Tenant now owes rent for October, 2017, and requested to amend their Application to include this outstanding rent. The Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. The Application was therefore amended accordingly.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent and the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

The Landlord testified that at the end of June, 2017, they entered into an oral tenancy agreement with the Tenant, for the Tenant to rent the top floor of the rental property for

\$1,550.00 a month, payable on the first day of each month. The Landlord testified that no security deposit was paid.

The Landlord testified that the Tenant only paid \$100.00 towards rent on August 1, 2017, and as a result, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) was personally served on the Tenant on August 10, 2017, in the presence of a witness. The Landlord also submitted a witnessed and signed Proof of Service Notice to End Tenancy indicating that the 10 Day Notice was served in the manner described above.

The 10 Day Notice in the documentary evidence before me, dated August 10, 2017, indicates that as of August 1, 2017, the Tenant owed \$1,450.00 in unpaid rent. The 10 Day Notice has an effective vacancy date of August 20, 2017, and indicates that it was personally served on the Tenant on August 10, 2017. The 10 Day Notice also states that if the Tenant does not pay the outstanding rent or file for dispute resolution within five days of receiving the 10 Day Notice, they will be presumed to have accepted that the tenancy is ending and must move out by the date set out on page one of the 10 Day Notice.

The Landlord testified that since the 10 Day Notice was served, the Tenant has not paid any money towards rent. The Landlord stated that the Tenant currently owes \$4,550.00 in outstanding rent; \$1,450.00 for August 2017, and \$1,550.00 a month for September and October 2017.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord’s notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was personally served with the 10 Day Notice on August 10, 2017.

Based on the above and in the absence of evidence to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period. As a result, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, August 20, 2017, and the Landlord is therefore entitled to an Order of Possession.

Based on the above, I also find that the Landlord is entitled to a Monetary Order in the amount of \$4,650.00; \$4,550.00 in outstanding rent, plus \$100.00 for the recovery of the filing fee pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an **Order of Possession** to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$4,650.00**. The Landlord is provided with this Order in the above terms and

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 23, 2017

Residential Tenancy Branch