



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession for unpaid rent and for cause. The Landlord also filed a monetary claim for: unpaid rent; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee.

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance for the Tenant during the 18 minute hearing and neither did the Tenant provide any evidence. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

The Landlord's agent testified that the Application and the Proceeding Package was served to the Tenant by registered mail to the rental unit on August 7, 2017. The Landlord provided a copy of the Canada Post tracking receipt into evidence to verify this method of service. The Landlord testified that the Canada Post website shows the documents had been received and signed for on August 23, 2017.

Based on the undisputed evidence of the Landlord, I find the Tenant was served with the required documents pursuant to Section 89(1) (c) of the Act.

During the hearing, the Landlord's agent clarified that the Tenant had personally been served with an amended Application on August 9, 2017 for an increased amount of unpaid rent for \$2,930.00. The Landlord's agent confirmed that the correct amount of rental arrears being claimed was in fact \$2,350.00.

The Landlord's agent was informed during the hearing that pursuant to Rule 4.2 of the Residential Tenancy Branch Rules of Procedure, an application for increased unpaid rent incurred since the time the Application was filed, can be amended at the hearing.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession to end the tenancy?
- Is the Landlord entitled to a Monetary Order for unpaid?
- Is the Landlord entitled to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim for unpaid rent?
- Is the Landlord entitled to recovery of the filing fee from the Tenant?

Background and Evidence

The Landlord's agent testified that this tenancy started on December 1, 2014 on a month to month basis. Rent is currently payable by the Tenant in the amount of \$580.00 on the first day of each month. The Tenant paid a security deposit of \$275.00 at the start of the tenancy which the Landlord still retains in trust.

The Landlord's agent testified that the Tenant failed to pay any rent for July 2017 and was also in rental arrears prior to July 2017 for \$30.00. As a result, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice").

In addition, the Tenant was also served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), also dated July 7, 2017 for a number of reasons, including repeatedly late payment of rent.

The 10 Day Notice and the 1 Month Notice was provided into evidence. The Landlord's agent testified that both notices to end tenancy were served to the Tenant by registered mail on July 7, 2017. The Landlord's agent provided the Canada post tracking number into evidence to verify this method of service and testified that the Canada Post website shows they were received and signed for on July 11, 2017.

The Landlord's agent testified that the Tenant has also failed to pay rent for August, September and October 2017. The Landlord's agent testified that while the Tenant has started the process of moving her property out of the rental unit, the Landlord still seeks an Order of Possession and a Monetary Order in the amount of \$2,350.00 for unpaid rent.

Analysis

I first turn my mind to the 10 Day Notice. Section 26(1) of Act requires a tenant to pay rent when it is due in accordance with their tenancy agreement whether or not the landlord complies with the Act. Section 46(1) of the Act allows a landlord to end the tenancy for unpaid rent by issuing a tenant with a 10 Day Notice.

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 in order to render it of no effect; or make an Application to dispute it. If the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and they must vacate the rental unit on the vacancy date on the 10 Day Notice.

Having examined the copy of the 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the 10 Day Notice was served to the Tenant by registered mail in accordance with Section 88(c) of the Act and that it was received by the Tenant on July 11, 2017.

There is no evidence before me that the Tenant paid the outstanding rent on the 10 Day Notice or made an Application to dispute it within the five day statutory time limit. Therefore, I am only able to conclude that the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice.

As the vacancy date on the 10 Day Notice has now passed and the Tenant is still occupying the rental unit without paying rent, I find the Landlord is now are entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and can then be enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental unit.

As the tenancy has been ended through the 10 Day Notice, I did not examine or make findings on the 1 Month Notice as this is now a moot issue.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's undisputed evidence that the Tenant has failed to pay rent for the months of July, August, September and October 2017 and rental arrears of \$30.00 for the period before the 10 Day Notice was served. Therefore, the Landlord is awarded \$2,350.00 in unpaid rent.

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

Therefore, the total amount payable by the Tenant to the Landlord is \$2,450.00 $((\$580.00 \times 4) + \$30.00 + \$100.00)$.

As the Landlord holds the Tenant's \$275.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

Accordingly, the Landlord is issued with a Monetary Order for the outstanding balance of \$2,175.00 $(\$2,450.00 - \$275.00)$. This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Copies of the above orders are attached to the Landlord's copy of this Decision. The Tenant should note that the Landlord is able to recover costs associated with the enforcement of the above granted orders.

Conclusion

The Tenant has breached the Act by not paying rent. The Landlord is granted a two day Order of Possession to end the tenancy. The Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the outstanding balance of rent and the filing fee in the amount of \$2,175.00.

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 26, 2017

Residential Tenancy Branch