



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC (Tenant's Application)
OPR, OPC, MNR, MNDC, MNSD, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed August 14, 2017, the Tenant requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 5, 2017 (the "10 Day Notice") and an Order canceling a 1 Month Notice to End Tenancy for Cause issued on August 5, 2017 (the "1 Month Notice").

In the Landlord's Application for Dispute Resolution filed August 23, 2017 the Landlord sought an Order of possession based on both Notices, monetary compensation for unpaid rent, damage to the rental unit and related losses, authority to retain the security deposit and recovery of the filing fee.

The hearing was conducted by teleconference on November 1, 2017.

Only the Landlord and her agent called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As the Tenant failed to attend the hearing, her application for an Order canceling the Notices is dismissed without leave to reapply.

The Landlord's agent testified that she served the Tenant with the Notice of Hearing and the Application on September 2, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. The Landlord's agent testified that she spoke to the Tenant about the hearing.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of September 7, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlord/Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation from the Tenant?
3. Should the Landlord recover the filing fee paid?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement indicating this tenancy began November 1, 2016. Monthly rent is payable in the amount of \$900.00 and the Tenant paid a \$450.00 security deposit. The agreement further provided that the Tenant was to pay a \$300.00 pet damage deposit which the Landlord's agent confirmed was not in fact paid.

The Tenant failed to pay rent for August 1, 2017 and the Landlord issued the 10 Day Notice, indicating the sum of \$900.00 was owed as of August 1, 2017. The 10 Day Notice also informed the Tenant he had five days in which to apply for dispute resolution or pay the outstanding rent.

At that same time the Landlord issued the 1 Month Notice. The reasons cited on the 1 Month Notice are as follows:

- the Tenant is repeatedly late paying rent;
- the Tenant has allowed an unreasonable number of occupants in a rental unit;
- the Tenant or a person permitted on the residential property by the Tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - put the landlord's property at significant risk;
- the Tenant has assigned or sublet the rental unit/site without the landlord's written consent;

The 1 Month Notice informed the Tenant that he had 10 days in which to apply for dispute resolution.

On the Details of Dispute section of the Landlord's Application they indicate the Tenant failed to pay rent for August, 2017, September 2017, and October 2017 and November 2017. The Landlord's agent confirmed that this information was provided as they expected the hearing would not occur for some time. She confirmed that the rent was in fact not paid, and that the outstanding rent as of the date of the hearing was \$3,600.00.

The Landlord also sought recovery of the filing fee.

Analysis

The Tenant failed to attend the hearing and her application is dismissed. I have reviewed both Notices and find that they comply with section 52 of the *Act*. Pursuant to section 55 of the *Residential Tenancy Act*, I must grant an Order of Possession when I dismiss a tenant's application to cancel a notice. As such, I grant the Landlord an Order of Possession which shall be effective two (2) days after service on the Tenant. This Order must be served on the Tenant as soon as possible and may be filed and enforced in the B.C. Supreme Court as an Order of that Court.

I accept the Landlord's undisputed evidence that the Tenant failed to pay rent in the amount of \$900.00 per month for August, September, October and November 2017. Section 26 of the *Act* requires a Tenant to pay rent and as such I find the Landlord is entitled to monetary compensation in the amount of \$3,600.00 for unpaid rent.

As the Landlord has been successful, I also award them recovery of the filing fee in the amount of \$100.00.

Conclusion

The Tenant failed to attend the hearing and therefore, his application to cancel the Notices is dismissed. Pursuant to section 55 of the *Act*, the Landlord is entitled to an Order of Possession. This Order is enforceable in the B.C. Supreme Court.

The Landlord is entitled to monetary compensation in the amount of **\$3,700.00** for unpaid rent, as well as recovery of the filing fee. The Landlord is authorized to retain the Tenant's \$450.00 security deposit as partial payment of the amount awarded and is entitled to a Monetary Order for the balance due in the amount of **\$3,250.00**. The Monetary Order must also be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

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: November 01, 2017

Residential Tenancy Branch