



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF CNR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

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

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 9:15 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord's witness testified that on August 20, 2017, she personally served the tenants with a copy of the Landlord's Application for Dispute Resolution and Notice of Hearing. The landlord testified that her amended application for additional outstanding rent was sent to the tenants by registered mail on September 28, 2017.

Based on the above evidence, I am satisfied that the tenants were served with both the Landlord's original Application for Dispute Resolution and Amended application. Further, the landlord's application was filed after the tenants' application and this hearing was originally scheduled in response to the tenants' application. Therefore, the tenants ought to have been aware of this hearing date and time. The hearing proceeded in the absence of the tenants.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

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

Background and Evidence

The tenancy began on February 1, 2017 with a monthly rent of \$1500.00 payable on the 1st day of each month. The tenants were required to pay a security deposit of \$750.00 and a pet deposit of \$100.00 at the start of the tenancy but the tenants did not pay either of these deposits.

The landlord's witness testified that on August 9, 2017 she personally served the tenant with the 10 Day Notice.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$11,700.00. The landlord testified that for the 10 month period of February 2017 to November 2017, the total rent payable was \$15,000.00 but to date the tenants have only paid a total of \$3300.00. The landlord was also seeking an order for the tenants to pay the outstanding security and pet deposit of \$850.00.

Analysis

I am satisfied that the tenants were personally served with the 10 Day Notice on August 9, 2017 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the tenants' application must be dismissed as the tenants failed to pay the outstanding rent in full within 5 days after receiving the 10 Day Notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

Section 55(1) of the Act states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the Act.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I accept the landlord's claim for outstanding rent of \$11,700.00.

As this tenancy has come to an end, the landlord's claim to recover the security and pet deposit is dismissed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$11,800.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order; this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$11,800.00. Should the tenants 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: November 06, 2017

Residential Tenancy Branch