



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR CNR FF

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;

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on September 14, 2017 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, present evidence and make submissions. The parties confirmed service of the respective applications for dispute resolution, including the Notice of Hearing, Interim Decision and evidence on file.

Preliminary Issue – Amendment to Landlord’s Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include loss of rent in the amount of \$739.00 that was payable on December 1, 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would

suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

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

Is the tenant entitled to recover the filing fee for his application?

Background and Evidence

The tenancy began on September 1, 2012 and the current monthly rent is \$739.00 payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold. The current landlord took over ownership of the rental property as of June 29, 2017. Tenants were advised of the new ownership by way of a letter dated June 26, 2017 and provided instructions on how and to whom rent was to be paid going forward. The landlord submitted a "Transfer of Beneficial Interest" agreement in support of the ownership transfer.

The landlord testified the tenant failed to pay the \$739.00 rent payable on August 1, 2017. The landlord testified that on August 2, 2017 the tenant was served with the 10 Day Notice by inserting a copy into the mail slot on the door of the rental unit.

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 \$3,695.00. The landlord testified that this includes unpaid rent for the period of August 2017 to December 2017. The landlord testified the tenant paid the amount of \$739.00 on July 1, 2017 to the new ownership so the tenant was aware of the ownership transfer.

The tenant acknowledged service of the 10 Day Notice and that he did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenant did not dispute the amount of outstanding rent as claimed by the landlord.

Rather, the tenant argued that the notice of ownership change letter he received was unsigned and from a person unknown to him. The tenant argued there was no ownership change information posted in the lobby of the rental building. The tenant also argues the new owner does not have a business license.

In reply, the landlord submits that the previous owner has a registered business license and the new owners simply purchased the previous company so the license is still valid.

Analysis

I am satisfied that the tenant received the 10 Day Notice on August 2, 2017.

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.

The tenant's application for dispute resolution was not filed until September 19, 2017 which is not within the timeline permitted under the Act. It appears the tenant filed his application in response to a subsequent 10 Day Notice dated September 18, 2017. I find the tenants application must be dismissed as it was not filed within the five day time period required under the Act. Further, the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent.

The tenant's argument that the letter of ownership change is invalid as it was not signed is dismissed. I find the tenant was notified of the ownership change as he acknowledged receiving the letter and also paid rent as per the instructions in this letter for the month of July 2017.

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 find that the tenant was obligated to pay monthly rent in the amount of \$739.00 but failed to pay rent for the period of August 2017 to December 2017. I accept the landlord's claim for outstanding rent of \$3695.00.

The landlord continues to hold a security deposit of \$350.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3345.00.

The tenant is not entitled to recover the filing fee for his application.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 \$3345.00. 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: December 04, 2017

Residential Tenancy Branch