



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, PSF, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on October 2, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to provide services or facilities required by law - Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 6, 2017 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing to pursue its application. As a result I dismiss the Tenant’s application without leave to reapply.

I accept the Landlord’s evidence that on October 13, 2017 Tenant JD was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenant JD is deemed to have received the Materials on October 18, 2017. Tenant NS was not served and is not a party named on the tenancy agreement. I therefore dismiss the application as against this person.

The Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on March 7, 2017. Rent of \$2,600.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,300.00. The Tenant failed to pay the rent for September 2017 and on September 28, 2017 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door of the unit. The Tenant has not moved out of the unit. The Tenant has not paid the arrears or the rents for October, November and December, 2017. The Landlord claims these unpaid rents and lost rental income for January 2018.

Analysis

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Rent is payable until a tenancy ends. Based on the Landlord's evidence, I find that the Tenant failed to pay rent as required under the tenancy agreement and that the Landlord is entitled to unpaid rent for September, October, November and December 2017 of **\$10,400.00**. As the tenancy ends prior to January 1, 2017 I dismiss the claim for lost rental income for this month. As the Landlord's claim for unpaid rent was successful I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$10,500.00**. Deducting the security deposit of **\$1,300.00** plus zero interest leaves **\$9,200.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I order that the Landlord retain the **deposit** and interest of \$1,300.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$9,200.00**. If necessary, this order may be filed in the Small Claims 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 19, 2017

Residential Tenancy Branch