



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and recovery of the filing fee and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by three Agents for the Landlord (the “Agent(s)”), who provided affirmed testimony. The Tenant did not attend. The Agents were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agents testified that the Application, Notice of Hearing, and evidence package were sent to the Tenant at the rental unit by registered mail on October 27, 2017. In support of their testimony they provided the registered mail receipt for my consideration. As a result of the foregoing and in the absence of evidence to the contrary, I find that the Tenant was deemed served the Application, Notice of Hearing, and the Landlord’s evidence on November 1, 2017, five days after it was sent by registered mail.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision. At the request of the Agents, a copy of the decision and any applicable Orders will be both mailed and emailed to them at the addresses provided in the hearing.

Preliminary Matters

At the outset of the hearing the Agents identified that the amount of outstanding rent has increased since the time the Application was filed and requested to amend the Application to include this additional outstanding rent. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the

Application was made. Pursuant to the *Act* and the Rules of Procedure the Application was therefore amended to include the updated outstanding rent amounts.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent and the recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Background and Evidence

This hearing relates to a rental unit in a subsidized housing complex where the Tenant's rent amount is calculated as a percentage of their income. The Agents testified that the tenancy began on May 1, 2011, and that \$482.00 in rent is due on the first day of each month. The Agents provided a copy of the tenancy agreement and significant documentary evidence to support that the Tenant has a history of delinquent rent payments. The Agents testified that when the Tenant did not pay the rent on time on September 1, 2017, a 10 Day Notice was served.

The 10 Day Notice in the documentary evidence before me, dated September 12, 2017, has an effective vacancy date of September 25, 2017, and indicates that as of September 1, 2017, the Tenant owed \$1,676.00 in unpaid rent. The Notice also states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

The Agent who served the 10 Day Notice testified that at 1:50 P.M. on September 12, 2017, they attended the Tenant's rental unit and knocked on the door. They testified that when the tenant did not answer, they posted the 10 Day Notice to the Tenant's door. In support of their testimony they also provided a Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (the "Proof of Service") for my consideration.

The Agents testified that the Tenant continues to reside in the rental unit and that as of the date of the hearing, they owe \$4,821.00 in outstanding rent and NSF fees; \$4,701.00 in outstanding rent and \$120.00 in NSF fees. In support of this testimony the Agents submitted significant documentation regarding the Tenant's rent payment and arrears history, a Monetary Order Worksheet, and a copy of the tenancy agreement which states, under section 34(c), that NSF cheques are subject to a minimum charge of \$20.00 or the current rate charged by their bank for these services.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 46(4) and 46(5) of the *Act* also state:

46 (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice on September 15, 2017, three days after it was posted to the door of their rental unit. I also find that the Tenant was obligated to pay the monthly rent of \$482.00 on time and in full each month.

As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five (5) days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five (5) day period. Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, September 25, 2017, and the Landlord is therefore entitled to an Order of Possession.

I also find that the Tenant owes \$4,701.00 in outstanding rent and that pursuant to section 7 of the Residential Tenancy Regulation (the "Regulation"), they are responsible to pay the \$120.00 in NSF fees claimed by the Landlord. Further to this, I find that the Landlord is also entitled to recover the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$4,921.00; \$4,701.00 in outstanding rent, \$120.00 in NSF fees, and \$100.00 for the filing fee.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in of the Supreme Court of British Columbia and enforced as an Order of the Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,921.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. 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: January 12, 2018

Residential Tenancy Branch