



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid 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.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant confirmed service of both the original and amended applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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 tenant?

Background and Evidence

The tenancy began on April 1, 2016 and the current monthly rent is \$900.00 payable on the 1st day of each month.

The landlord testified that on October 16, 2017 the tenant was personally served with the 10 Day Notice.

The landlord testified that the tenant did not pay the outstanding rent amount of \$1200.00 as indicated in the 10 Day Notice within five days of service of the Notice.

The landlord testified that they received \$300.00 from the tenant on a later date but the balance of \$900.00 outstanding as of the date of the 10 Day Notice was never paid.

The landlord's amended monetary claim is for outstanding rent in the amount of \$3600.00. The landlord testified that this includes unpaid rent for the months of October 2017 to January 2018.

The tenant acknowledged service of the 10 Day Notice and that he did not pay the full amount of the rent arrears indicated, within five days, of receiving the Notice. The tenant testified that he tried to pay \$2000.00 by e-transfer towards the outstanding balance but the landlord refused this payment. The tenant did not provide any record of this e-transfer attempt and was not sure of the date. The tenant testified that it could have been in the beginning of the following month after receiving the 10 Day Notice. The tenant testified that at this same time he also paid \$300.00 cash which the landlord accepted.

The tenant agreed the current amount of outstanding rent is \$3600.00 as claimed by the landlord.

Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on October 16, 2017.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. As the tenant received the 10 Day Notice on October 16, 2017, any outstanding rent should have been paid by October 21, 2017. The tenant's own testimony was that he did not attempt to pay the outstanding amount until the following month. Even if the landlord refused to accept this payment as alleged by the tenant, the tenant was already outside the five day time period required under the Act.

I find that the 10 Day Notice issued on October 16, 2017 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.

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 that the tenant was obligated to pay monthly rent in the amount of \$900.00 but failed to pay rent for the months of October 2017 through to January 2018. I accept the landlord's claim for outstanding rent of \$3600.00.

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 \$3700.00.

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 \$3700.00. 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: January 09, 2018

Residential Tenancy Branch