



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 an Application for Dispute Resolution (the “Application”) 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 the Landlord and the Tenant, both of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of documents or evidence.

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 Landlord, copies of the decision and any applicable Orders will be e-mailed to them at the address provided in the hearing. At the request of the Tenant, a copy of the decision will be mailed to them at the dispute address.

Preliminary Matters

Jurisdictional Matters

On the Application the address for the Landlord and the address for the Tenant are the same. In order to confirm that I had jurisdiction under the *Act* to hear this matter, I inquired with the parties about the nature of the living arrangements. Both parties were in agreement that the Tenant rents a completely separate unit on the property with their own kitchen and bathroom facilities and that the Tenant does not share either kitchen or

bathroom facilities with the owner. As a result of this testimony, I was satisfied that I had jurisdiction to hear this matter and the hearing proceeded as scheduled.

Amendment

The Landlord testified that since the time the Application was filed, the amount of rent owing has increased. 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. The Application was therefore amended to include additional outstanding rent owing since the time the Application was filed.

Settlement

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

Hearing Management

After both parties had been provided with ample opportunity to provide evidence and testimony in relation to this matter, I determined that I had before me the evidence I required in order to render my decision. I advised the parties that they could provide concluding statements and both parties indicated that they wished to do so. However, the concluding statements provided by the parties related to ongoing issues regarding general maintenance and repair of the unit, not the payment of rent in relation to the 10 Day Notice to End Tenancy for Unpaid Rent of Utilities (the "10 Day Notice") which is the subject of this dispute. Furthermore, as the parties strongly disagreed with one another, they began raising their voices and speaking over one another.

Rule 7.17 of the Rules of Procedure states that each party will be given an opportunity to present evidence related to their claim and that the arbitrator has the authority to determine the relevance, necessity, and appropriateness of evidence. Rule 8.1 of the Rules of Procedure states that the arbitrator determines when the hearing has ended. Pursuant to the above noted sections to the Rules of Procedure, I determined that the concluding statements being provided by both parties were neither relevant nor

constructive, and as I had already determined that I had the evidence necessary to render my decision, I concluded the hearing.

Issue(s) to be Decided

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

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

Background and Evidence

Both parties agreed that there was not a written tenancy agreement in place and that the tenancy had commenced approximately eight years ago. Both parties also agreed that the Tenant rents a completely separate unit on the same property as the Landlord and that rent in the amount of \$675.00 is due on the first day of each month.

The Landlord testified that on December 1, 2017, the Tenant owed \$2,125.00 in outstanding rent and that as a result, a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day notice") was served.

The 10 Day Notice in the documentary evidence before me, dated December 5, 2017, has an effective vacancy date of December 14, 2017, and indicates that as of December 1, 2017, the Tenant owed \$2,125.00 in outstanding rent. The Landlord testified that on December 5, 2017, the 10 Day Notice was posted to the door of the Tenant's rental unit and submitted a Proof of Service Notice to End Tenancy (the "Proof of Service") in support of their testimony. The Tenant testified that the 10 Day Notice was served in the manner described above and confirmed that they received it on December 5, 2017.

Both parties were in agreement that the Tenant continues to reside in the rental unit and that no rent has been paid for the period of October, 2017 – January, 2018. The Tenant testified that they have withheld rent because the Landlord has refused to complete necessary maintenance and repairs but acknowledged that they have neither completed nor paid for emergency repairs in accordance with section 33 of the *Act*. The Tenant did not provide any testimony in relation to any other section of the *Act* under which they had authority to withhold or deduct a portion of the rent.

Analysis

Section 26 of the *Act* outlines the rules regarding the payment and non-payment of rent as follows:

Rules about payment and non-payment of rent

- 26** (1) 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.

Based on the evidence and testimony before me, I am not satisfied that the Tenant had a right under the *Act* to deduct all or a portion of the rent owed. As a result, I find that the Tenant was obligated to pay the monthly rent of \$675.00 on time and in full each month.

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 section 88 of the *Act*, I find that the Tenant was served with the 10 Day Notice on December 5, 2017, the day they acknowledged receiving it.

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.

Section 55(2) of the *Act* states that a landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired. Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and that the order takes effect on the date specified in the order.

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 corrected effective date of the 10 Day Notice, December 15, 2017, and the Landlord is therefore entitled to an Order of Possession pursuant to section 55(2) of the *Act*. As the effective date of the 10 Day Notice has passed and the Tenant acknowledged that no rent has been paid for the period of October, 2017 – January, 2018, the Order of Possession will be effective two days after service of the Order on the Tenant.

Based on the evidence and testimony before me, I find that the Tenant owes \$2,700.00 in outstanding rent. Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to the recovery of the \$100.00 filing fee. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$2,800.00.

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 the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$2,800.00** for rent owed and recovery of the filing fee. 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 19, 2018

Residential Tenancy Branch