



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RR, 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 13, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order for a rent reduction - Section 65.

The Landlord applied on October 21, 2017, with an amendment made December 14, 2017 for:

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

The Tenant did not attend the hearing. The Landlord appeared and was prepared to respond to the Tenant’s application. As the Tenant did not attend the hearing to pursue its application I dismiss the Tenant’s application. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

I accept the Landlord’s evidence that the Tenant was served with the Landlord’s application for dispute resolution and notice of hearing (the “Materials”) by registered mail on October 26, 2017. 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 is deemed to have received the Materials on October 31, 2017. The service of the application and amended application was witnessed by Witness AK. I accept the Landlord's supported evidence that it served the amendment to the Tenant in person on December 14, 2017 in accordance with Section 89 of the Act.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 15, 2017. Rent of \$1,850.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit. The Tenant owed arrears of \$650.00 for September 2017 and failed to pay rent for October 2017. On October 3, 2017 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant failed to pay rent for November 2017, December 2017 and January 2018. The Landlord last saw the Tenant in the unit when the amendment was served on December 14, 2017 and has not checked since to see if the Tenant is still in the unit. The Landlord does not know whether the Tenant is still in the unit. The Landlord claims unpaid rent and seeks an immediate order of possession.

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 has failed to pay rent as required and that the Landlord is entitled to unpaid rent of **\$6,662.50** to and including January 7, 2018. As the Landlord does not know whether the Tenant still resides in the unit and as the Landlord has obtained an order of possession that will be effective 2 days after its service on the Tenant I dismiss the Landlord's claim for further overholding rent with leave to reapply should the Tenant be in the unit past January 7, 2018.

As the Landlord's claim for rent has had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,762.50**. Deducting the security deposit of **\$925.00** plus zero interest leaves **\$5,837.50** 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 the Landlord to retain the security deposit plus interest of \$925.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$5,837.50**. 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: January 03, 2018

Residential Tenancy Branch