



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- authorization to recover the filing fee for this application, pursuant to section 72; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent, DM, appeared on behalf of the ('the landlord'), and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated September 15, 2017, with an effective date of September 25, 2017, by leaving it in the mail box of the rental unit. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on September 18, 2017, three days after its posting.

The landlord testified that the hearing package was personally served to the tenant on October 24, 2017. RB testified in the hearing that he was present as a witness. In accordance with section 89 of the *Act*, I find the tenant duly served with the hearing package on October 24, 2017.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord gave undisputed testimony regarding the following facts. This month-t-month tenancy began on March 1, 2014, with monthly rent set at \$1,000.00, payable on the first of each month. The landlord collected, and still holds, a security deposit of \$500.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, indicating an effective move-out date of September 25, 2017. The notice states that the tenants failed to pay rent in the amount of \$1,000.00 which was the total rent outstanding at the time the notice was issued. The landlord provided undisputed testimony that the tenant has failed to pay the outstanding rent since the 10 Day Notice was issued. The landlord is seeking a monetary order of \$1,000.00 as well as an Order of Possession. The landlord indicated in the hearing that he would like the security deposit dealt with at the end of the tenancy.

Analysis

Section 26 of the Act, in part, states 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.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenant failed to pay the full rent due within five days of being deemed to have received the 10 Day Notice. The tenants did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on September 28, 2017, the corrected effective date of the 10 Day Notice. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,000.00 for the month of September 2017. Therefore, I find that the landlord is entitled to \$1,000.00 in rental arrears for the month of September 2017.

I find the landlord is also entitled to recover the filing fee for this application.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant(s)**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a \$1,100.00 Monetary Order in favour of the landlord which allows the landlord to recover unpaid rent for September 2017 as well as the filing fee. The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 3, 2018

Residential Tenancy Branch