



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 dealt with an Application for Dispute Resolution by Direct Request (the “Application”) that was adjourned to a participatory hearing. The Landlord filed under the *Residential Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent, an Order of Possession, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agents for the Landlord (the “Agents”), both of whom 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, the Notice of Direct Request, and the evidence package were sent to the Tenant by registered mail on January 15, 2018, and provided a copy of the registered mail receipt in the documentary evidence before me. As a result, I find that the Tenant was deemed served the above documents on January 20, 2018, five days after they were sent by registered mail.

The Agents also provided affirmed testimony that the Notice of Hearing was sent to the Tenant by registered mail on January 24, 2018, and provided the registered mail tracking number for my reference. As a result, I find that the Tenant was deemed served the Notice of Hearing on January 29, 2018, five days after it was sent by registered mail.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Agents, copies of the decision and any Orders issued in favor of the Landlord will be e-mailed to the Agents at the e-mail address provided on the Application.

Preliminary Matters

Although the Landlord applied for Dispute Resolution by Direct Request, the matter was adjourned to a participatory hearing because the name of the Landlord on the Application did not match the name of the Landlord on the tenancy agreement or the 10 Day Notice to End Tenancy for unpaid Rent or Utilities (the "10 Day Notice"). In the hearing the Agents testified that the name of the Landlord changed in September 2017, and submitted a copy of a certificate of name change from the governing authority in the province. As a result, I am satisfied that the Applicant is the Landlord and the hearing proceeded on that basis.

In the hearing the Agents testified that the amount of outstanding rent has increased since the Application was filed and requested to retain the security deposit paid by the Tenant to offset the 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. Section 72 of the *Act* also states that if the director orders a tenant to pay any amount to the landlord, the landlord may deduct this amount from any security deposit or pet damage deposit due to the tenant. The Application was therefore amended to include additional rent and retention of the Tenant's security deposit in accordance with the *Act* and the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order and retention of the security deposit pursuant to sections 67 and 72 of the *Act*?

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

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the Tenant resides in subsidized housing where the portion of the market rent payable by the tenant is dependent on the Tenant's income. The tenancy agreement indicates that market rent for the Tenant's rental unit is \$820.00 and the Agents testified that the Tenant's rent contribution amount is \$400.00 and due on the first day of each month. The tenancy agreement also indicates that a security deposit in the amount of \$300.00 was paid by the Tenant.

The Agents testified that when the Tenant failed to pay the rent as required in December, 2017, a 10 Day Notice was sent to the Tenant by registered mail on December 8, 2017. In support of their testimony the Agents provided a Proof of Service document and a registered mail receipt.

The 10 Day Notice in the documentary evidence before me, dated December 8, 2017, has an effective vacancy date of December 19, 2017, and states that as of December 1, 2017, the Tenant owed \$400.00 in outstanding rent.

The Agent stated that since the 10 Day Notice was served in December, 2017, they have only received the following two rent payments, which were sent from a social services agency on behalf of the Tenant:

- \$375.00 on January 22, 2018; and
- \$400.00 on January 24, 2018.

As a result, the Agents testified that the Tenant currently owes \$425.00 in outstanding rent.

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 December 13, 2017, five days after it was sent by registered mail. As the Tenant was deemed served on December 13, 2017, I find that the effective date of the 10 Day Notice, December 19, 2017, is incorrect as it does not comply with the required notice period. However, I find that the incorrect effective date is automatically corrected to December 23, 2017, pursuant to section 53 of the *Act*. I also find that the Tenant was obligated to pay the monthly rent of \$400.00, 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 days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five 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 corrected effective date of the 10 Day Notice, December 23, 2017, and the Landlord is therefore entitled to an Order of Possession. As the corrected effective date of the 10 Day Notice has passed and the Tenant has not paid rent for the current month, the Order of Possession will be effective two days after service on the Tenant.

Based on the testimony and documentary evidence before me, I am also satisfied that the Tenant owes \$425.00 in outstanding rent. Pursuant to section 72 of the *Act*, I find

that the Landlord is entitled to the recovery of the \$100.00 filing fee and to retain the \$300.00 security deposit paid by the Tenant in partial satisfaction of the above owed debt. As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$225; \$425 in outstanding rent, plus the cost of the \$100.00 filing fee, less the \$300.00 security deposit.

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 \$225.00. 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: February 9, 2018

Residential Tenancy Branch