



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 and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 2:05 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on January 29, 2018, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

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 landlord acquired this property one year ago and the tenancy was already in place. The landlord was not aware of the start date of the tenancy. The rental unit is a garage in which the tenant resides. There is a separate tenancy with two tenants for the main house and also a separate tenancy with one tenant who resides in a trailer on the property. The current monthly rent for this garage unit is \$1000.00 payable on the 1st day of each month. The tenant paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold.

The landlord advised that the tenant has filed an application to dispute the landlord's 10 Day Notice and that matter was scheduled to be heard on March 26, 2018. The landlord advised the four tenants together filed one application although the landlord views these as three separate tenancies with different rent amounts.

The landlord testified that on January 16, 2018 she served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice. As per the 10 Day Notice, an amount of \$4000.00 was outstanding as of January 1, 2018. The landlord testified this was comprised of October 2017 to January 2018 rent.

The landlord's monetary claim is for outstanding rent in the amount of \$6000.00. The landlord testified that this includes unpaid rent as per the amount indicated on the 10 Day Notice plus rent for the months of February and March 2018.

Analysis

I am satisfied that the tenant was deemed served with the 10 Day Notice on January 19, 2018, three days after its posting, pursuant to sections 88 & 90 of the Act.

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. Although the tenant filed an application to dispute the 10 Day Notice, which was unfortunately scheduled to be heard on a different date, the tenant ought to have still attended this hearing. As the tenant failed to attend the hearing and present evidence in dispute of the 10 Day Notice, I find the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, January 29, 2018.

I find that the Notice issued by the landlord 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 accept the landlord's uncontested evidence and claim for outstanding rent of \$6000.00.

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 \$6100.00.

The landlord continues to hold a security deposit of \$500.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$5600.00.

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 \$5600.00. 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: March 05, 2018

Residential Tenancy Branch