



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPR
CNR, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), and an order suspending or setting conditions on the Landlord’s right to enter the rental unit.

This hearing also dealt with a cross-application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking retention of the Tenant’s security deposit and a Monetary Order for unpaid rent, money owed, or damage or loss under the Act, regulation, or tenancy agreement, an Order of Possession, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. As the Agent was present and prepared to proceed, the hearing proceeded based on the Landlord’s Application. The Agent was 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 for Dispute Resolution and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as outlined below.

The Agent testified the Application and the Notice of Hearing were sent to the Tenant by registered mail at the dispute address on February 2, 2018, and provided a copy of the registered mail receipt. As a result, I find that the Tenant was deemed served the Application and the Notice of Hearing on February 7, 2018, five days after the documents were sent by registered mail.

The Agent also testified the evidence of the Landlord was sent to the Tenant by registered mail at the dispute address on February 15, 2018, and provided a copy of the registered mail receipt. As a result, I find that the Tenant was deemed served the Landlord's evidence on February 20, 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 Agent, copies of the decision and any orders issued in the Landlord's favor will be e-mailed to the agent and the Landlord at the e-mail addresses provided in the hearing.

Preliminary Matters

The Agent testified that since the time they filed the Application, the amount of outstanding rent owed has increased. The Agent therefore requested to amend the Application to include additional rent owing for March, 2018. 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 Application was filed. As a result, I have amended the Landlord's Application to include additional rent owing for March, 2018.

As the Tenant did not appear at the hearing to proceed with their Application or to present any evidence or testimony for consideration, the Tenant's Application is dismissed without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Landlord entitled to retain the Tenant's security deposit and recover the filing fee pursuant to section 72 of the *Act*?

Is the landlord entitled to a Monetary Order for unpaid rent, money owed, or damage or loss under the *Act*, regulation, or tenancy agreement pursuant to section 67 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the six month fixed-term tenancy began August 1, 2013, and that rent in the amount of \$725.00 is due on the first day of each month. The tenancy agreement allows the Landlord to charge a \$25.00 late fee for the late payment of rent and also indicates that a security deposit in the amount of \$362.50 was paid by the Tenant, which the Landlord still holds. The Agent testified that rent increases have been served on the Tenant since the tenancy began in accordance with the *Act* and regulations, and as a result, the Tenant's rent is currently \$792.97.

The Agent testified that when the Tenant failed to pay the rent as required, a 10 Day Notice was posted to the door of the Tenant's rental unit on January 7, 2018. The Agent submitted a witnessed and signed Proof of Service Notice to End Tenancy and Written Demand to Pay Utilities (the "Proof of Service") in support of her testimony.

The 10 Day Notice in the documentary evidence before me, dated January 7, 2018, has an effective vacancy date of January 31, 2018, and states that as of January 1, 2018, the Tenant owed \$1009.41 in outstanding rent.

The Agent testified that since the 10 Day Notice was served, the Tenant has not made any rent payments and currently owes \$2,645.35 in outstanding rent and late fees. Although the Agent suspects that the Tenant vacated the rental unit sometime in March, they are seeking an Order of Possession in the event that the Tenant still resides or maintains possession in the rental unit.

Analysis

Although the Tenant filed an Application seeking to cancel a 10 Day Notice within the five day period, the Tenant did not appear at the hearing to present evidence in support of their Application. As the Landlord, who is the respondent named in the Tenant's Application, appeared at the hearing, the Tenant's Application is dismissed without leave to reapply. I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a Notice to End Tenancy issued by a landlord, I must consider if the landlord is entitled to an Order of Possession if the Application is dismissed and the landlord has issued a Notice to End Tenancy that is compliant with section 52 of the *Act*.

Section 55 of the *Act* states the following with regards to an Order of Possession for the Landlord:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the above, I must now turn my mind to whether the 10 Day Notice issued by the Landlord complies with section 52 of the *Act* which states:

Form and content of notice to end tenancy

52 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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The 10 Day Notice in the documentary evidence before me is signed and dated, gives the address of the rental unit to which the 10 Day Notice applies, states the effective date of the 10 Day Notice and the grounds for ending the tenancy, and is in the approved form. As a result, I find that the 10 Day Notice complies with section 52 of the *Act* and the Landlord is therefore entitled to an Order of Possession pursuant to section 55 of the *Act*.

Based on the undisputed oral testimony of the Agent, I find that the Tenant owes \$2,645.35 in unpaid rent and late fee's. Pursuant to section 72 of the Act, I also find that the Landlord is entitled to recover the \$100.00 filing fee and to retain, in full, the \$362.50 security deposit paid by the Tenant. As a result, I find that the Landlord is entitled to a Monetary Order in the amount of \$2,382.85; \$2,645.35 in back owed rent and late fees, plus \$100.00 for the recovery of the filing fee, less the \$362.50 security deposit paid by the Tenant and held by the Landlord.

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 the that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,382.85. 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. The Landlord has leave to apply for November rent.

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 9, 2018

Residential Tenancy Branch