



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPC, MNRL, FFL, CNC, CNR

Introduction

This hearing was convened in response to the cross applications.

The Landlord filed an Application for Dispute Resolution in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, an Order of Possession for Cause, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution. It is apparent from details on the Application for Dispute Resolution that the Landlord is seeking compensation for parking fees, and that matter will be considered at these proceedings.

The Landlord has only named the male Tenant in the Application for Dispute Resolution and can, therefore, only be granted Orders that name this party.

The Building Manager stated that on January 23, 2017 the Application for Dispute Resolution, the Amendment to an Application for Dispute Resolution, the Notice of Hearing, and 32 pages of evidence that was submitted with the documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant named on the Application, via registered mail, at the rental unit. The Landlord submitted Canada Post documentation that corroborates this testimony. In the absence of evidence to the contrary I find that these documents have been served to the Tenant named on the Landlord's Application for Dispute Resolution in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

As the Application for Dispute Resolution was properly served to Tenant named on the Landlord's Application, the hearing proceeded in his absence. This party will hereinafter be referred to as the Tenant.

The Tenant and a third party filed an Application for Dispute Resolution in which they applied to cancel a Notice to End Tenancy for Cause and to cancel a Notice to End Tenancy for Unpaid Rent.

On February 27, 2017 the Landlord submitted 12 pages of evidence to the Residential Tenancy Branch. The Building Manager stated that this evidence was served to the Tenant, via registered mail, on February 27, 2017. In the absence of evidence to the contrary I find that these documents have been served to the Tenant in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings.

On March 06, 2017 the Landlord submitted a large amount of evidence to the Residential Tenancy Branch. The Property Manager stated that this evidence is a duplicate of evidence previously submitted to the Residential Tenancy Branch.

The Tenants submitted 4 pages of evidence to the Residential Tenancy Branch. As the Tenants did not attend the hearing to declare that it was served to the Landlord, it was not accepted as evidence for these proceedings.

The parties present at the hearing were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter #1

The hearing today was scheduled to begin at 9:00 a.m. and by the time the teleconference was terminated at 6:18 a.m. the Tenants had not appeared.

I find that the Tenants failed to diligently pursue their Application for Dispute Resolution and I therefore dismiss the Tenants' Application, without leave to reapply.

Preliminary Matter #2

At the hearing the Building Manager stated that the Landlord is seeking \$25.00 NSF fees for the months of January, February, and March of 2018.

There is nothing in the Application for Dispute Resolution or the Amendment to the Application for Dispute Resolution that notified the Tenant that the Landlord would be seeking compensation for NSF fees. As the Landlord did not notify the Tenant they

would be seeking compensation for NSF fees, I decline to consider the claim for NSF fees.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to a monetary Order for unpaid rent or utilities?

Is the Landlord entitled to a monetary Order for unpaid parking fees?

Background and Evidence

The Building Manager stated that:

- this tenancy began on September 01, 2016;
- the Tenant is the only tenant named on the tenancy agreement, although the agreement names another person as an occupant;
- when the tenancy began rent of \$900.00 was due by the first day of each month;
- the rent was increased to \$933.00 on September 01, 2017;
- the Tenant agreed to pay parking fees of \$25.00 per month;
- the Tenant did not pay any rent for January, February, or March of 2018;
- the Tenant did not pay the parking fee for January, February, or March of 2018;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of January 25, 2018, was posted on the door of the rental unit on January 15, 2018;
- the Ten Day Notice to End Tenancy declared that the Tenant owed \$958.00 in rent that was due on March 01, 2017, which included a \$25.00 fee for parking; and
- the Tenant is still residing in the rental unit.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord and that the Tenant is currently required to pay rent of \$933.00 by the first day of each month and that the Tenant has not paid rent for January, February, or March of 2018. As the Tenant is still occupying the rental unit and is required to pay rent pursuant to section 26(1) of the *Act*, I find that the Tenant must pay \$2,799.00 in outstanding rent to the Landlord.

On the basis of the undisputed evidence, I find that the Tenant agreed to pay a monthly parking fee of \$25.00 as a term of this tenancy and that the Tenant has not paid the parking fee for January, February, or March of 2018. As the Tenant agreed to pay this fee, I find that he owes the Landlord \$75.00 for parking fees.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted at the rental unit on January 15, 2018.

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on January 18, 2018.

Section 46(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on January 18, 2018, I find that the earliest effective date of the Notice was January 28, 2018.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was January 28, 2018.

As the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and the Tenant has not yet paid the overdue rent, I grant the landlord an Order of Possession.

As I have granted the Landlord an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent, I find there is no need to consider whether the Landlord is entitled to an Order of Possession on the basis of the One Month Notice to End Tenancy for Cause.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective **at 1:00 p.m. on March 31, 2018**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,974.00, which includes \$2,799.00 in unpaid rent, \$75.00 for parking fees, and \$100.00 in

compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$2,974.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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 *Act*.

Dated: March 14, 2018

Residential Tenancy Branch