



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM, FFL

Introduction

This hearing dealt with the Landlords adjourned Direct Request Application filed under the Residential Tenancy Act, (the “Act”), for an order of possession, a monetary order for unpaid rent and an order to recover the cost of filing the application from the tenant.

The Landlord attended the hearing. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that he personally served the Tenant with the Notice of Hearing by hand delivering a copy to the Tenant at the rental unit on April 6, 2018. I find that the Tenants have been duly served with the Notice of Hearing in accordance with the Act. The Landlord was affirmed to be truthful in their testimony.

The Landlord was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However only the evidence relevant to the issues and findings in this matter are described in this decision

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to monetary compensation for unpaid rent?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on February 1, 2018 as a month to month tenancy. Rent in the amount of \$1,100.00 is to be paid by the first day of each month. The Tenant paid the Landlord a \$275.00 security deposit.

The Landlord testified that he served the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) to the Tenant on March 11, 2018 in person. The Notice has an effective date of March 21, 2018 and an outstanding rent amount of \$550.00 for March 2018. The Landlord confirmed that he submitted an amendment to his original application; stating that the Tenant has not paid the rent for April 2018 and requested that an additional \$1,100.00 be added to his claim for a monetary order for unpaid rent. The Landlord also testified that the Tenant has not paid the outstanding amount indicated on the Notice or served the Landlord with an application to show they had disputed the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (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 find that the Tenant did not pay the rent or dispute the Notice, and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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.

I find that the landlord is entitled to an Order of Possession and a monetary award in the amount of \$1,650.00, the amount claimed by the landlord, for unpaid rent owing for March and April 2018. I have awarded the Landlord the April rent as it is currently past due.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee.

Conclusion

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

I find for the Landlord under sections 67 and 72 of the Act. I grant the Landlord a Monetary Order in the amount of \$1,750.00.00 for the outstanding rent and for the recovery of the filing fee for this application. 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: April 23, 2018

Residential Tenancy Branch