



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent, authority to withhold the security deposit against the 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 agent for the Landlord (the “Agent”), who provided affirmed testimony. The Tenant did not attend. 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 and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Application and the Notice of Hearing were sent to the Tenant at the rental unit by registered mail on March 19, 2018, and provided me with the registered mail tracking number. With the Agent’s permission, I logged onto the mail provider’s website and verified that the registered mail was sent on March 19, 2018, and that it was picked up and signed for on April 5, 2018. As a result of the above, I find that the Tenant was deemed served with the on Application and the Notice of Hearing on March 24, 2018, pursuant to sections 89 and 90 of the *Act*. In any event, I am also satisfied that the Tenant received the Application and the Notice of hearing on April 5, 2018.

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 at the e-mail address provided in the hearing.

Preliminary Matters

At the outset of the hearing the Agent withdrew the Application for a Monetary Order for unpaid rent as the Tenant has now paid the outstanding rent in full.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Agent testified that the tenancy began on November 1, 2009, and that rent in the amount of \$1,003.76 is due on the first day of each month. The Agent also stated that a security deposit in the amount of \$410.00 was paid, which the Landlord still holds.

The Agent stated that when the Tenant did not pay the rent as required on March 1, 2018, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was posted to the door of the Tenant's rental unit on March 2, 2018. In support of this testimony the Agent provided a copy of the 10 Day Notice and a witnessed and signed Proof of Service document confirming that the 10 Day Notice was served in the manner described above.

The 10 Day Notice in the documentary evidence before me, dated March 2, 2018, has an effective vacancy date of March 15, 2018, and states that as of March 1, 2018, the Tenant owed \$1,003.76 in outstanding rent. The 10 Day Notice also states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

In support of her testimony that \$1,003.76 was owed as of March 1, 2018, the Agent provided a copy of the tenancy agreement, several Notices of Rent Increase, and a ledger showing the outstanding rent. The Agent acknowledged that there is currently no rent outstanding and that rent for use and occupancy of the rental unit has been paid until May 31, 2018. However, the Agent testified that as no payments were made by the Tenant until April 11, 2018, the Landlord is seeking to enforce the 10 Day Notice.

The Tenant did not attend the hearing to provide any evidence or testimony for my consideration.

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.

Based on the documentary evidence and testimony before me, I find that the Tenant was deemed served with the 10 Day Notice on March 5, 2018, pursuant to sections 88 and 90 of the *Act*. I also find that the Tenant was obligated to pay rent in the amount of \$1,003.75 on time and in full on March 1, 2018.

As there is no evidence before me to the contrary, I find that the Tenant failed to pay the rent owed in full as outlined above within the five (5) days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five (5) 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 effective date of the 10 Day Notice, March 15, 2018, and the Landlord is therefore entitled to an Order of

Possession pursuant to section 55 of the *Act*. As the effective date of the 10 Day Notice has passed and the Agent testified that rent for use and occupancy of the rental unit has been paid for May, 2018, the Order of Possession will be effective at 1:00 P.M. on May 31, 2018.

Pursuant to section 72 of the *Act*, I also find that the Landlord is entitled to the recovery of the \$100.00 filing fee, which they are entitled to deduct from the Tenant's security deposit or recover by way of the attached Monetary Order.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **1:00 P.M. on May 31, 2018, 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 \$100.00. 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. Should the Landlord wish to do so, they may choose to retain \$100.00 from the Tenant's security deposit in lieu of enforcing this Order.

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: May 30, 2018

Residential Tenancy Branch