



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPUM-DR / CNC MNDC OLC ERP PSF RR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- Various other remedies under the Act.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:00 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 10:30 a.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 the tenant was personally served the Application for Dispute Resolution and Notice of Hearing. The landlord could not recall the exact date of service but testified that it was served on the tenant by the landlord’s wife B.G. a few days after the application was filed on February 22, 2018. The landlord also submits the tenant should be aware of the hearing as the tenant filed her own application which she served to the landlord and the two applications were scheduled to be heard simultaneously.

Based on the above evidence, I am satisfied that the tenant was personally served with the Landlord’s Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. I find the tenant also ought to have been aware of the hearing date and time as the tenant’s own application was scheduled to be heard at the same time.

Accordingly, in the absence of the tenant's participation in this hearing, I order the tenant's application dismissed in its entirety without leave to reapply.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent payable up to the date of the hearing. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession for unpaid rent and/or utilities or for cause?

Is the landlord entitled to a monetary award for unpaid rent and/or utilities?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenancy began on October 1, 2017 with a monthly rent of \$1550.00 payable on the 1st day of each month plus 50% of the utilities. The tenant paid a security deposit of \$780.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on February 12, 2018, his wife B.G. served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application.

The landlord testified that the tenant did not pay the outstanding amount of rent or utilities as indicated on the 10 Day Notice within five days of service of the Notice. The landlord testified that the tenant has continued to pay some but not the full rent since being served with the 10 Day Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$1350.00 and utilities in the amount of \$486.27. The landlord submitted a Direct Request Worksheet detailing the outstanding rent each month beginning in November 2017. As of February 2018 the balance of rent outstanding was \$1050.00. The landlord testified that since this date the tenant was short an additional total of \$300.00 in rent for the months of March, April and May 2018. The landlord also submitted a Direct Request Worksheet detailing an outstanding amount of \$486.27 in utilities as of February 2018. The landlord also submitted copies of utilities bills for this period.

Analysis

I am satisfied that the tenant was deemed served with the 10 Day Notice on February 15, 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 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 25, 2018. The tenant only filed an application to dispute a One Month Notice which was served to the tenant on February 24, 2018. The tenant's application was not filed until February 28, 2018 at which time she would have already been conclusively presumed to have accepted the tenancy ended pursuant to the 10 Day Notice. In either event, as the tenant's application is dismissed as she did not attend the hearing to provide evidence in support of her application to dispute the One Month Notice, the landlord would also be entitled to an order of possession pursuant to the One Month Notice.

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.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice and One Month 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.

I find that the tenant was obligated to pay monthly rent in the amount of \$1550.00 plus 50% of the utilities but failed to pay the full rent and utilities over the periods as outlined above. I accept the landlord's claim for outstanding rent and utilities of \$1836.27.

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 \$1936.27.

The landlord continues to hold a security deposit of \$780.00. 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 \$1156.27.

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 \$1156.27. 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: May 10, 2018

Residential Tenancy Branch