



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, OPL

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 and an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord 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 Landlord testified that the Notice of Hearing and the Application were personally served on the Tenant at the rental unit on April 17, 2018. As a result, I find that the Tenant was personally served with the Notice of Hearing and the Application on April 17, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in his favor will be mailed and e-mailed to him at the addresses provided in the hearing.

Preliminary Matters

Preliminary Matter #1

On April 30, 2018, the Landlord filed an Amendment to an Application for Dispute Resolution (the “Amendment”) with the Residential Tenancy Branch (the “Branch”) clarifying that he lives in the upper unit of the home. The Landlord stated that a copy of the Amendment was posted to the door of the Tenant’s rental unit on April 30, 2018. Pursuant to section 90 of the *Act*, I therefore find that the Tenant was deemed served with the Amendment on May 3, 2018, and the Application was amended to correctly state the Landlord’s address.

Preliminary Matter #2

The Landlord stated that as the Tenant has failed to vacate the rental unit as required pursuant to the notices to end tenancy, the amount of outstanding rent owed has increased since the date the Application was filed. As a result, the Landlord sought to amend the Application in the hearing to include outstanding rent owed for May and June, 2018. Rule 4.2 of the Rules of Procedure states that the Application may be amended in the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the date the Application was filed. The Application was therefore amended pursuant to the *Act* and the Rules of Procedure to reflect that the Landlord is seeking \$4,400.00 in outstanding rent for March, April, May, and June of 2018.

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?

Background and Evidence

The Landlord testified that the month-to-month tenancy began in either December of 2016 or January of 2017, and that rent in the amount of \$1,200.00 is due on the first day of each month. The Landlord also stated that no security deposit was paid.

The Landlord stated that on January 28, 2018, he served the Tenant with a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) by

posting a copy of the Two Month Notice to his door in the presence of a witness. In support of this testimony the Landlord provided a copy of the Two Month Notice and a witnessed and signed Proof of Service. The Two Month Notice in the documentary evidence before me, dated January 28, 2018, has an effective date of March 31, 2018, and states that the reason for ending the tenancy is because the Landlord or his close family member intends in good faith to occupy the rental unit.

The Landlord stated that the Tenant did not dispute the Two Month Notice, only paid \$400.00 in rent for March 2018, and failed to move out as required on March 31, 2018. When asked, the Landlord confirmed that no compensation has been paid or otherwise given to the Tenant in relation to the Two Month Notice. The Landlord stated that when the Tenant failed to move out and failed to pay both the remaining \$400.00 owed for March 2018, and the \$1,200.00 owed for April 2018, he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") to the door of the Tenant's rental unit on April 2, 2018, in the presence of a witness. In support of this testimony the Landlord provided a copy of the 10 Day Notice and a witnessed and signed Proof of Service.

The 10 Day Notice in the documentary evidence before me, dated April 2, 2018, has no effective date listed but states that as of April 1, 2018, the Tenant owed \$2,000.00 in outstanding rent. The Landlord stated that since making a \$400.00 rent payment on March 5th or March 6th of 2018, the tenant has made no further rent payments, has not disputed the 10 Day Notice, and continues to reside in the rental unit.

As a result, the Landlord is seeking a 2 day order of possession and \$4,400.00 in outstanding rent: \$800.00 for March 2018, and \$1,200.00 per month for April, May, and June of 2018.

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

Analysis

Section 49 of the *Act* states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit, that a tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice, and that if a tenant who has received a notice under this section does not make an application for dispute resolution within 15 days after the date they

receive the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 90 of the *Act*, I find that the Tenant was deemed served with the Two Month Notice on January 31, 2018, three days after it was posted to the door of the rental unit. As there is no evidence before me that the Tenant disputed the Two Month Notice, I therefore find that the Tenant is conclusively presumed under section 49(9) of the *Act* to have accepted that the tenancy ended on the March 31, 2018.

Based on the above, and the fact that the Two Month Notice complies with section 52 of the *Act*, I find that the Landlord is entitled to an Order of Possession. As the effective date of the Two Month Notice has passed and the Landlord testified that the rent has not been paid in full for several months, the Order of Possession will be effective two days after service on the Tenant.

I also accept the Landlord's undisputed testimony that rent is \$1,200.00 per month and that since March 1, 2018, the Tenant has only paid \$400.00 in rent. However, section 51 of the *Act* states that tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Landlord confirmed that no compensation has been given to Tenant in relation to the Two Month Notice, I find that the Tenant was entitled to one free month of rent or compensation in the amount of \$1,200.00 pursuant to section 51(1) of the *Act*. As a result, I find that the Landlord is only entitled to \$3,200.00 in outstanding rent; \$4,400.00 in rent owed for March – June, 2018, less the \$400.00 paid by the Tenant and the \$1,200.00 owed to him in compensation pursuant to section 51(1) of the *Act*.

As a result, I find that the Landlord is therefore entitled to a Monetary Order in the amount of \$3,200.00 pursuant to section 67 of the *Act*.

Although the Landlord also applied for an Order of Possession based on the 10 Day Notice, as I have already found above that the Tenancy is ended as a result of the Two Month Notice, I have not made any findings of fact or law in relation to the validity of the 10 Day Notice.

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 that Court.

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$3,200.00. 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.

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: June 20, 2018

Residential Tenancy Branch