



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR OPL MNR FF / CNR FF

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 pursuant to section 55;
- an order of possession for landlord’s use of property pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the landlord’s amended application and evidence on file.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

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

Background and Evidence

The tenancy for this 2 bedroom basement suite began in April 2015 with a monthly rent of \$700.00 payable on the 1st day of each month. The rental unit was originally rented to the tenant H.S. and his co-tenant G.S. After the landlord initially served them with a 2 Month Notice back in March 2017, tenant G.S. vacated; however, tenant H.S. did not vacate and requested additional time. The parties agreed to an increased rent amount of \$800.00 and the landlord agreed to not enforce the 2 Month Notice for some additional time.

The tenant testified that he paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold. The landlord testified that only tenant G.S. paid a security deposit of \$200.00 at the start of the tenancy and that amount was returned to him in full when he vacated the rental unit in 2017.

The landlord served the tenant with five separate 10 Day Notices all on March 15, 2018. The tenant acknowledged receiving all five of these notices and filed an application to dispute them.

The landlord testified that on March 25, 2018 the tenant was personally served with the 2 Month Notice and a copy was also sent by registered mail on March 22, 2018. A registered mail tracking number was provided in support of service as well as a video of the tenant being served in person. The landlord also provided a mail tracking report which confirms the package was signed for by tenant J.K. on April 10, 2018.

The tenant acknowledged receipt of the 2 Month Notice but repeatedly stated that he received it "at the last moment". The tenant did not provide any clarification on what he meant by "the last moment". He did acknowledge receiving the 2 Month Notice after receiving the 10 Day Notices and acknowledged that it was served personally to him.

The landlord's monetary claim is for outstanding rent in the amount of \$3050.00. The landlord testified that this includes unpaid rent from as far back as November 1, 2016. The landlord testified that the tenant was \$50.00 short for this month. The tenant paid \$650.00 in cash for this month. The landlord kept asking for the other \$50.00 but it was not that big a deal. Then in March 2017 when he issued the first 2 Month Notice, tenant G.S. paid him \$350.00 but tenant H.S. did not pay his \$350.00 share. The landlord testified that in May 2017 the entire month's rent of \$700.00 was owed as he did not enforce the 2 Month Notice which would have provided for 1 month free rent. Tenant G.S. vacated at this time but H.S. did not. Then in November 2017 the tenant was having issues with receiving his salary from his employer and the \$800.00 rent for this month was not paid. Then for the month of April 2018, the landlord specifically asked in writing for the rent to be paid by cheque as he was aware the tenant was disputing past cash payments. The landlord submitted a copy of this written request and testified that a copy was served to the tenant with the application package. The landlord testified that no rent was paid for April 2018.

The tenant disputed the amount of outstanding rent as claimed by the landlord. The tenant testified that all rent was paid in cash and has been paid up to date. The tenant denied receiving any written instructions to pay April 2018 rent by cheque.

Analysis

I am satisfied that the tenant was personally served with the 2 Month Notice on March 25, 2018 and also deemed served by registered mail on March 27, 2018, five days after its mailing, pursuant to sections 88 and 90 of the Act. I accept the landlord's testimony and evidence in finding the tenant received the 2 Month Notice. The tenant acknowledged receiving the 2 Month Notice was being unclear about when it was received. I am also satisfied the tenant was served with the various 10 Day Notices which he acknowledged receiving.

I find the 2 Month Notice complies with the form and content requirements of section 52 of the Act.

Pursuant to section 49 of the Act, the tenant may make a dispute application within fifteen days of receiving the 2 Month Notice. If, as in the present case, the tenant does not make an application for dispute within fifteen days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, May 31, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

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. I prefer the landlord's testimony over that of the tenant's in regards to the outstanding rent claimed by the landlord. The landlord's testimony was detailed and forthright. The tenant simply argued that all outstanding rent was paid in cash but provided no proof of such cash payments. I also accept the landlord's testimony and evidence that the tenant was specifically requested to pay April 2018 rent by cheque and failed to do so.

I accept the landlord's claim for outstanding rent of \$3050.00.

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 \$3150.00.

The parties were also in dispute with respect to the amount of security deposit paid at the start of the tenancy. I find the tenant has not provided any evidence to support his claim that a \$500.00 security deposit was paid and I prefer the landlord's testimony that only \$200.00 was collected which has since been returned to tenant G.S.

As there is no security deposit to offset, I find that the landlord is entitled to a Monetary Order in the full amount of \$3150.00.

As the landlord has been granted an order of possession pursuant to the 2 Month Notice, the tenants' application to cancel the 10 Day Notices is moot and the tenants are not entitled to recover their 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(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 \$3150.00. Should the tenants 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 04, 2018

Residential Tenancy Branch