



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNDCL-S MNRL-S OPR

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act (the "Act") for:

- An order of possession pursuant to section 55;
- A monetary order for unpaid rent, damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given an opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent KM (the "landlord").

As both parties were present service of documents was confirmed. The landlord testified that they served the 10 Day Notice to End Tenancy for Unpaid Rent dated May 8, 2018 (the "10 Day Notice") by posting on the rental unit door on that date. The landlord served the landlord's application for dispute resolution dated May 18, 2018 by registered mail sent on May 29, 2018 with the evidentiary materials. The tenant confirmed receipt of the landlord's materials. Based on the testimonies, I find that the landlord's 10 Day Notice, application and evidence were served in accordance with sections 88 and 89 of the Act.

The tenant testified that they had emailed some evidentiary materials to the landlord a few days before the hearing. The landlord said that they had not received the materials. Rule 3.15 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure requires that respondents provide their written evidence at least 7 days prior to a hearing. The tenant's evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. I advised the parties that I would consider each piece of evidence that the tenant I advised the parties that I would only be able to consider those pieces of evidence included in the tenant's package that the landlord did not object to or confirmed having received on prior occasions (e.g., a copy of the tenancy agreement). I have

taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure, which outlines the circumstances whereby an Arbitrator can consider late evidence.

At the outset of the hearing the landlord made an application to amend the monetary amount sought as the arrears amount has increased since the filing date. As rent becoming due is reasonably foreseeable, pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$2,650.00 to \$3,525.00. .

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

The parties agreed on the following facts. This fixed-term tenancy began in August, 2017. The monthly rent is \$875.00 payable on the first of each month. A security deposit of \$437.50 and pet damage deposit of \$437.50 were paid at the start of the tenancy and still held by the landlord. The written tenancy agreement provides that a late charge of \$25.00 applies to rent not paid by the due date.

The tenant failed to pay rent for the months of April, May, June and July, 2018. The tenant gave some evidence that they attempted to provide payment for the month of April by a cheque which was not cashed by the landlord. The tenant confirmed that the cheque was not provided by the first of the month. The tenant received the 10 Day Notice on or about May 8, 2018 and did not file a dispute nor did they pay the full amount of the arrears. The tenant did not pay any rent for the subsequent months.

Analysis

I accept the evidence that the 10 Day Notice was posted on the rental unit door on May 8, 2018. In accordance with sections 88 and 90 of the *Act*, I find that the 10 Day Notice was deemed served on May 11, 2018, three days after posting.

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a valid 10 Day Notice.

I find that the tenant was obligated to pay the monthly rent in the amount of \$875.00. I accept the evidence before me that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of

the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, May 21, 2018. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 55 of the *Act*.

I accept the parties' evidence that the tenant has not paid any rent for 4 months. I accept that the total amount of arrears for this tenancy is \$3,525.00. Accordingly, I issue a monetary award for unpaid rent and late fees owing of \$3,525.00 as at July 17, 2018, the date of the hearing, pursuant to section 67 of the *Act*.

As the landlord's application was successful the landlord may recover the \$100.00 filing fee for the application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit of \$437.50 and pet damage deposit of \$437.50 in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$2,750.00. The tenants must be served with this Order as soon as possible. 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: July 17, 2018

Residential Tenancy Branch