



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for a Monetary Order for unpaid rent, and for the recovery of the filing fee paid for this application. The Landlord originally filed an application under the Direct Request process which was adjourned to a participatory hearing due to insufficient evidence to confirm service of the 10 Day Notice.

The Landlord and Tenant were both present for the duration of the teleconference hearing. A family member of the Tenant attended the hearing to translate for the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Hearing package, along with a copy of the Landlord’s evidence by registered mail. The Tenant did not submit any evidence prior to the hearing.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should an Order of Possession be granted to the Landlord?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should the Landlord be granted the recovery of the filing fee paid for this Application for Dispute Resolution?

Background and Evidence

The Landlord stated that the tenancy began approximately five years ago. A tenancy agreement, signed August 1, 2017, was submitted into evidence. The Landlord stated that the original tenancy agreement was verbal and a new agreement was signed in 2017 to put the terms of the tenancy into writing.

The Landlord testified that rent was \$800.00 per month, but was increased to \$900.00 per month through a mutual agreement with the Tenant. The increase was set to take effect on May 1, 2018. Rent is due on the first day of each month. The Landlord confirmed that a security deposit in the amount of \$300.00 was paid at the outset of the tenancy and is still being held in trust by the Landlord.

The Tenant testified that the tenancy began in 2011. They stated that in 2018 the Landlord approached them to increase the rent to \$1,000.00 per month from \$800.00, but they did not agree. Instead, the Tenant agreed to an increase of \$100.00 to a monthly amount of \$900.00. They stated that they were provided with a written notice to increase the rent to \$900.00 per month, but did not sign it, although they confirmed that they agreed to increase the rent to \$900.00 instead of \$1,000.00.

The Landlord provided testimony that the Tenant has been repeatedly paying rent late and that they have been unable to provide him with any good reason as to why the rent is consistently late.

The Landlord served the Tenant with a 10 Day Notice on May 10, 2018. He confirmed that both pages of the 10 Day Notice were served to the Tenant. The 10 Day Notice was served to the Tenant in person and stated that rent in the amount of \$800.00 was due on May 1, 2018.

The Landlord testified that they listed \$800.00 as the amount of rent outstanding as May 1, 2018 was when the rent increase was to take effect and they were unsure of whether the Tenant would be paying \$800.00 or \$900.00.

The Landlord submitted a receipt into evidence dated May 20, 2018 showing a payment of \$900.00 made on this date. The receipt noted “for use and occupancy only”.

The Landlord testified that \$900.00 was paid on time for June 2018 and July 2018, and also accepted for use and occupancy only.

The Tenant confirmed receipt of the 10 Day Notice on May 10, 2018. The Tenant was unable to remember if both pages of the 10 Day Notice were provided and no longer had the 10 Day Notice in their possession to confirm this.

The Tenant testified that they did not apply to dispute the 10 Day Notice and paid the \$900.00 outstanding rent on May 20, 2018. They also confirmed that the full rent amount was paid for June 2018 and July 2018.

The Tenant submitted that the Landlord told them they could pay the rent on any day of the month, as long as it was paid in cash. The Landlord disagreed with this and stated that rent was due on the first day of the month and that the Tenant was aware of this.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

Both parties were in agreement that the 10 Day Notice was served to the Tenant on May 10, 2018. Based on the testimony of both parties, I find that at the time the 10 Day Notice was issued, rent for May 2018 had not yet been paid.

Despite the disagreement of the parties as to when monthly rent was due, I accept the Landlord’s testimony that rent was due on the first day of the month, as confirmed by the tenancy agreement submitted into evidence.

In accordance with Section 46(1) of the *Act*, a landlord may end the tenancy on any day after the day the rent is due. Therefore, a 10 Day Notice issued on May 10, 2018 was issued after the day that the rent was due.

Despite there being some dispute as to whether the rent increase that took effect on May 1, 2018 was done in accordance with the *Act*, I find that this is not the matter before me. Regardless of the amount of rent owing, I find that no amount of rent was paid for May 2018 until May 20, 2018 when a payment of \$900.00 was made.

Pursuant to Section 46(4) of the *Act*, after receiving a 10 Day Notice, a tenant has five days to pay the rent owing or apply to dispute the notice. As both parties agreed that the Tenant paid the rent owing on May 20, 2018, I find that Tenant was not in compliance with Section 46(4).

If a Tenant does not pay the outstanding rent or apply to dispute the notice within the five days allowable under the *Act*, pursuant to Section 46(5), they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

The second page of the 10 Day Notice outlines the rights of a tenant who receives this notice. Although the family member of the Tenant provided testimony that they did not remember if they received both pages of the 10 Day Notice, I accept the testimony of the Landlord who stated that both pages were served to the Tenant. Both pages of the 10 Day Notice were also submitted into evidence.

As both parties agreed that \$900.00 rent was paid on May 20, 2018, and \$900.00 paid each month for June 2018 and July 2018, I find that no rent remains outstanding and therefore a Monetary Order for unpaid rent will not be issued to the Landlord. The Landlord confirmed during the hearing that he is no longer seeking to recover unpaid rent.

I also find that the Landlord accepted rent payments after the issuance of the 10 Day Notice for use and occupancy only. I find that the payments made did not reinstate the tenancy as the outstanding rent for May 2018 was not paid within the five days allowable under the *Act*.

Pursuant to Section 55(2)(b) of the *Act*, an Order of Possession will be granted to the Landlord to be served upon the Tenant. As the Landlord has accepted rent for July 2018 for use and occupancy only, the Order of Possession will be effective on July 31, 2018 at 1:00 pm.

As the Landlord was successful in their application, I award them the recovery of the filing fee paid for this application in the amount of \$100.00 in accordance with Section

72 of the *Act*. This amount may be retained from the security deposit at the end of the tenancy.

Conclusion

I grant an Order of Possession to the Landlord effective **July 31, 2018 at 1:00 pm**. Should the Tenant 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 72 of the *Act*, the Landlord is allowed to **retain \$100.00 from the security deposit** for the recovery of the filing fee paid for this application.

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