



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “Act”), for an order of possession for cause, a monetary order for unpaid rent and an order to recover the cost of filing the application from the tenant.

On July 4, 2018, the landlord submitted an Amendment to An Application for Dispute Resolution seeking to amend their original application include a request for an order of possession and a monetary order for unpaid rent.

The Landlord attended the hearing. The Landlord was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that the documents were sent by registered mail on June 2, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Preliminary Matter

During the hearing, the Landlord testified that the Tenant had not pay rent on for the month of July 2018. The Landlord requested that his application be amended to include an order of possession and a monetary order for unpaid rent.

I will allow the Landlord's request for an amendment to his application and proceed in this hearing to include the Landlord's request for an order of possession and a monetary order for unpaid rent.

Issues to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to monetary compensation for unpaid rent?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on December 1, 2017, as a one-year fixed term tenancy. Rent in the amount of \$1,800.00 is to be paid by the first day of each month, and the Tenant paid the Landlord a \$900.00 security deposit and a \$900.00 pet damage deposit.

The Landlord testified that she issued a One Month Notice for Cause (the One Month Notice) on May 7, 2018. The reasons checked off by the Landlord within the Notice are as follows:

- *Tenant is repeatedly late paying rent*

The Notice states the Tenants must move out of the rental unit by June 30, 2018. The Notice informed the Tenants of the right to dispute the Notice within 10 days after receiving it. The Landlord testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice.

The Landlord also testified that she submitted an amendment to her original application; stating that she served the Tenant a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10-Day Notice) to the Tenant on July 4, 2018, in person. The Notice has an effective date of July 12, 2018, and an outstanding rent amount of \$800.00 for July 2018. The Landlord also testified that the Tenant has not paid the full outstanding amount indicated on the Notice or served the Landlord with an application to show they had disputed the Notice.

The Landlord testified that the Tenant is still living in the rental unit and that there is \$400.00 in outstanding rent as of the date of this hearing. The Landlord is requesting an order of possession and the recovery of the unpaid rent.

Analysis

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

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I find that the Tenant did not pay the rent or dispute the 10-Day Notice, served on July 4, 2018, and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an Order of Possession and I award the Landlord 400.00, in unpaid rent owing for July 2018.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee.

The Landlord is permitted to retain the awarded amount from the Tenant's security deposit that she is holding, in satisfaction of this award.

Conclusion

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant. 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.

I award the Landlord \$500.00 and grant the Landlord permission to retain that amount from the Tenant's security deposit in satisfaction of this award.

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 23, 2018

Residential Tenancy Branch