



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, FFL

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, an Order of Possession, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by Landlord and legal counsel for the Landlord. The Tenant did not attend. The Landlord provided affirmed testimony and both the Landlord and his legal counsel were given 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.

Legal counsel for the Landlord stated that the Application, the Notice of Hearing, the Residential Tenancy Branch (the “Branch”) fact sheet, and the instructions for the respondent were personally served on the Tenant by a process server on May 25, 2018. In support of this submission, the Landlord submitted an affidavit from the process server affirming that the aforementioned documents were served in the manner described above. As a result, I find that the Tenant was personally served the Application, the Notice of Hearing, the Residential Tenancy Branch fact sheet, and the instructions for the respondent as required by the *Act* and the Rules of Procedure on May 25, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with 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 e-mailed to him at the e-mail address provided in the hearing.

Preliminary matters

In the hearing the Landlord provided affirmed and undisputed testimony that since the Application was filed, additional rent in the amount of \$2,800.00 is owed. The Landlord and the legal counsel for the Landlord therefore requested to amend the Application to include loss of rent for June and July of 2018. The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application was made. As a result, I have amended the Application to include outstanding rent for June and July of 2018 in accordance with the *Act* and the Rules of Procedure.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed-term tenancy began on September 15, 2017, and that rent in the amount of \$1,400.00 is due on the 15th day of each month. In the hearing the Landlord testified that at the start of the tenancy, the Tenant paid only \$700.00 in rent for September 1, 2017 – September 31, 2017, and that the written tenancy agreement was signed, a verbal agreement was reached between them that rent would be due on the first day of each month, starting October 1, 2017. The tenancy agreement also states that a \$700.00 security deposit was paid, which the Landlord confirmed he still holds.

The Landlord stated that the Tenant only paid \$700.00 towards January rent on approximately January 7, 2018, and that since that date, no further rent has been paid. As a result, the Landlord testified that he served four separate notices to end tenancy on April 5, 2018; one each for January, February, March and April of 2018.

The 10 Day Notice in the documentary evidence before me for outstanding January rent is dated April 5, 2018, has an effective vacancy date of April 18, 2018, and states that as of January 1, 2018, the Tenant owed \$700.00 in outstanding rent. It also states that it was served on the Tenant on April 5, 2018, by attaching a copy to the door of the Tenant's rental unit or by placing a copy in the Tenant's mailbox or mail slot.

The Landlord testified that the 10 day Notice was served in the manner described above, that no rent has been paid since the 10 day Notice was served, and that no application has been filed by the Tenant seeking to dispute the 10 Day Notice. Further to this, the Landlord and his legal counsel stated that as of the date of the hearing \$9,100.00 is owed in unpaid rent. As a result, the Landlord requested an Order of Possession, authorization to withhold the security deposit paid by the Tenant towards the outstanding rent owed, and a Monetary Order for the balance of rent owing and recovery of the filing fee.

Analysis

Section 46 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

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.

However, section 46(4) and 46(5) of the *Act* also state:

46 (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 have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the 10 Day Notice for outstanding January rent on April 8, 2018, three days after it was attached to the door of the Tenant's rental unit.

I also find that the Tenant was obligated to pay the monthly rent of \$1,400.00, on time and in full each month, and I accept the undisputed and affirmed testimony of the Landlord that the Tenant currently owes \$9,100.00 in outstanding rent for January – July, 2018. As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five (5) days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five (5) day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice for outstanding January rent, April 18, 2018, and the Landlord is therefore entitled to an Order of Possession. As the effective date of the 10 Day Notice has passed and rent has not been paid in several months, the Order of Possession will be effective two days after service on the Tenant.

I also find that the Landlord is entitled to the recovery of the \$100.00 filing fee, and to retain the \$700.00 security deposit paid by the Tenant in partial recovery of the outstanding rent owed, pursuant to section 72 of the *Act*. Based on the above, the Landlord is therefore entitled to a Monetary Order in the amount of \$8,500.00; \$9,100.00 in outstanding rent, plus the \$100.00 filing fee, less the \$700.00 security deposit retained by the Landlord.

Although the Landlord also submitted three other 10 Day Notice's for February, March, and April of 2018, as I have already found above that the Tenancy is ended as a result of the 10 Day Notice for January, I find that it is unnecessary for me to make any findings of fact or law in relation to the other 10 Day Notices.

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 \$8,500.00. 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: July 12, 2018

Residential Tenancy Branch