



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF

Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on September 10, 2018 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:30 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide testimony, present evidence and make submissions.

The landlord testified that on September 14, 2018, a copy of the Application for Dispute Resolution including landlord's Amended Application, the Notice of Hearing and Interim Decision was sent to the tenant by registered mail. The landlord provided a registered mail tracking number and receipt in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the landlord's application for damages with leave to reapply as this matter is not related and the tenancy has not yet ended. The landlord also did not submit any evidence in support of the claim for damages with this application. Leave to reapply is not an extension of any applicable time limit.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

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

Background and Evidence

The tenancy began on November 1, 2017 with a monthly rent of \$700.00 payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on June 5, 2018 he personally served the tenant with the 10 Day Notice. A witnessed proof of service of the 10 Day Notice was provided with the application. The landlord testified that the tenant failed to pay the outstanding rent as indicated on the 10 Day Notice and has failed to make any rent payments since.

The landlord's monetary claim is for outstanding rent in the amount of \$6,970.00. The landlord testified that this includes unpaid rent for the period of November 2017 to October 2018. The landlord submitted a monetary order worksheet outlining the unpaid rent for each month of the above period.

Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on June 5, 2018 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, June 15, 2018.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted 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 accept the landlord's uncontested evidence and claim for outstanding rent of \$6,970.00.

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 \$7,070.00.

The landlord continues to hold a security deposit of \$350.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$6,720.00.

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 \$6,720.00. 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: October 02, 2018

Residential Tenancy Branch