



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPRM, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order of Possession and monetary order for unpaid rent. The Landlord also requests an order for payment of the filing fee.

The Landlord and his legal counsel appeared for the scheduled hearing. One of the Tenants, RG, appeared at the hearing and stated that his roommate was not participating. Neither party raised a concern about the service of the Notice of Hearing or evidence that was submitted by the parties.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, call witnesses and to cross-examine the other party on the relevant evidence provided in this hearing.

Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

Issues to be Decided

Is the Landlord entitled to an Order of Possession for Unpaid Rent, pursuant to section 55 of the Residential Tenancy Act (“Act”)?

Is the Landlord entitled to a monetary order for payment of rent arrears, pursuant to section 67 of the Act?

Is the Landlord entitled to payment of the filing fee pursuant to section 72 of the Act?

Background and Evidence

This tenancy began February of 2018 as a fixed term tenancy to end January 31, 2019; monthly rent is \$2,250.00 per month, payable on the first of each month, and a security deposit of \$1,125.00 was paid. The signed tenancy agreement submitted into evidence was missing the monthly rent amount, but the amount was not disputed. The Landlord states that one of the Tenants provided post dated cheques for the year in the amount of \$2,250.00.

The Landlord states that in May, the cheque was returned "NSF" and that he only received payment of \$800.00 in cash that month, leaving a balance in arrears. He states that he attempted to cash the cheques for June and July, but the cheques could not be negotiated.

The Tenant states that he paid the May rent later in the month by cash, but was short \$20.00 which he withdrew and paid at the Landlord's store. He does not have a copy of a receipt for the amount of the cash payment, stating his roommate may be in possession of any receipt and he is uncertain of his whereabouts at the present time.

The Tenant states that he went to the Landlord in June with concerns that his roommate was doing damage to the rental unit and that he should be evicted; he asked the Landlord to take photographs and that he not be held liable for the damage. There were difficulties in communication due to a language barrier between the parties. The Tenant states that he did not pay the rent from that point forward due to the ongoing issues and that rent for the past four months was withheld by him.

The Landlord delivered a Notice to End Tenancy for Unpaid Rent on July 5, 2018 for rent arrears of \$5,950.00 owing for May, June and July of 2018. The effective date of the eviction was July 18, 2018. The August and September rent are also in arrears and the total monetary claim is now \$10,450.00. The Notice was left with the Tenant and a witness statement was submitted with the Proof of Service. The Landlord states that no Application to dispute the notice was received and the rent continued to go unpaid. He requests an immediate Order of Possession and an order for payment of the arrears.

Analysis

A tenant is obligated to pay rent when it is due, pursuant to section 26 of the Act:

- 26** (1) *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.*
- (2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

Under section 46 of the Act, a landlord may end a tenancy with 10 days written notice for unpaid 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. [bolding added]*

I have reviewed the Notice to End Tenancy and find that it complies with section 52 in form and in content; section 52 requires that the notice be in writing and be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, the grounds for terminating the tenancy and be in the approved form.

There is no evidence before me to suggest that the Tenants filed a dispute notice or paid the arrears. Accordingly, the Tenants are conclusively presumed to have accepted the notice to end the tenancy as of the effective date of the notice. The Landlord is granted an Order of Possession.

I am satisfied that the Landlord has proven rent arrears in the sum of \$10,450.00. His evidence as to the May payment of \$800.00 is credible and the Tenant has failed to submit any documentary evidence (ie. rent receipt or bank withdrawal receipt) or a witness to support his claim that a full rent payment was made in cash for that month.

The Tenant has not provided evidence to suggest that he was granted authority to withhold or reduce rent pursuant to an Order of the Residential Tenancy Act. The Tenants had an ongoing legal obligation to pay the monthly rent on time, and had the option of pursuing any other claims or issues against the Landlord in an Application with the Residential Tenancy Branch.

I find that the Tenants are in arrears in rent in the sum of **\$10,450.00**, which the Tenants are jointly and severally liable to pay. As the Landlord was successful, I am awarding the filing fee of **\$100.00**.

This monetary order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

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 further grant an Order for payment of \$10,550.00 to the Landlord by the Tenant forthwith.

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: September 25, 2018

Residential Tenancy Branch