



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord also requests an order for payment of the filing fee and rent arrears.

The Landlord appeared for the scheduled hearing. The Tenant did not attend this hearing, although I left the teleconference hearing connection open for 10 minutes in order to enable the Tenant to call into this teleconference hearing scheduled for 11 A.M.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord explained that he served the Notice of Hearing on the Tenant in person on August 14, 2018 and that she indicated to him that she would not vacate unless by court order. I am satisfied that the Tenant was served with the Notice of Hearing in accordance with section 89 of the Act.

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 pursuant to sections 46 and 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

The tenancy began in June of 2018 when the previous renter vacated the premises. The Tenant is a friend of the former renter. The parties agreed that the Tenant could rent the premises for \$1,050.00 per month, payable on the first of each month; a security deposit was agreed upon at \$525.00, although it was not paid. The agreement was verbal and no written tenancy agreement was entered into.

The Landlord states that the Tenant cleaned and painted the rental unit and obtained a credit of \$800.00 for her June rent. Her balance of \$250.00 is owing and remains unpaid. The Landlord states that the Tenant paid only \$800.00 for her July rent, leaving arrears of \$250.00 for that month as well.

The first 10 Day Notice to End Tenancy was delivered to the Tenant July 26, 2018 by posting it on the Tenant's door; the notice stated that the security deposit of \$525.00 was unpaid. A second 10 Day Notice to End Tenancy was delivered on August 10, 2018 by posting it on the Tenant's door; it stated that the August rent of \$1,050.00 was due and owing as of August 1, 2018. It has a stated effective date of August 20, 2018.

The Landlord testified that the following rent is in arrears:

June arrears	\$250.00
July arrears	\$250.00
August arrears	\$1,050.00
<u>September arrears</u>	<u>\$1,050.00</u>

TOTAL	\$2,600.00
-------	------------

The Landlord requests an immediate Order of Possession, an order for payment of the rent in arrears and his filing fee of \$100.00.

Analysis

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

The Tenant did not call into the conference call by 11:10 a.m. As the Tenant chose not to participate, the hearing was conducted in her absence.

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.*

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 dated July 26th and find that it is invalid as it does not indicate rent that is owing. This notice is only permitted for unpaid rent or utilities, not for unpaid security deposit. Accordingly, that notice is cancelled and of no force or effect.

I have reviewed the second Notice to End Tenancy dated August 10, 2018 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. The notice indicates the amount of rent arrears for the month of August.

There is no evidence before me to suggest that the Tenant filed a dispute notice or paid the arrears within the required 5 days. Accordingly, the Tenant is *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.

The Landlord has filed a monetary claim for payment of the arrears in rent. I am satisfied that the rent in the sum of \$2,600.00 is currently outstanding and an order will be issued for payment by the Tenant. As the Landlord was successful in this application for possession, I am also prepared to award the filing fee of \$100.00. As such, I grant a monetary order in the amount of \$2,700.00.

This order must be served on the Tenant and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Tenant fails to make payment. Copies of this order are attached to the Landlord'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 \$2,700.00 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 28, 2018

Residential Tenancy Branch