



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR FFL

Introduction

This hearing redirected from an adjourned Direct Request proceeding in accordance with the Residential Tenancy Act (the “Act”) dealt with the landlord’s application for:

- An order of possession pursuant to section 55;
- A monetary award for unpaid rent pursuant to section 67; and
- Authorization to recover the filing fee for the application pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The landlord appeared and was given a full opportunity to make submissions, present evidence, give affirmed testimony and call witnesses.

The landlord testified that they had served the tenant with a 10 Day Notice on July 16, 2018 by posting on the rental unit door, the application for Direct Request and evidence by registered mail on August 7, 2018, and the notice of participatory hearing on August 16, 2018 by registered mail. The landlord submitted into evidence copies of Canada Post tracking receipts and a sworn Proof of Service. Based on the undisputed evidence of the landlord I find that the materials were deemed served on the tenant in accordance with sections 88, 89 and 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award as claimed?

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

Background and Evidence

The landlord gave undisputed evidence regarding the following facts. This periodic tenancy originally began in February, 2017. There are two named co-tenants on the tenancy agreement. The named respondent is one of the co-tenants named on the tenancy agreement but did not sign the written tenancy agreement. The other co-tenant vacated the suite in 2017 and the respondent and landlord agreed that the respondent would assume the tenancy.

The monthly rent was \$650.00 payable on the 15th of each month. A security deposit of \$325.00 and pet damage deposit of \$325.00 were paid at the start of the tenancy and are still held by the landlord.

The landlord testified that there was a rent arrear as of July 16, 2018 in the amount of \$650.00 and a 10 Day Notice was issued. The tenant did not make any payment against the arrears nor did they dispute the 10 Day Notice. The tenant did not make any subsequent payments for rent in any of the months that followed.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. I find that the tenant was obligated to pay the monthly rent in the amount of \$650.00. I accept the evidence that the tenant failed to pay the full rent due within the 5 days of service granted under section 46(4) of the Act nor did the tenant dispute the 10 Day Notice within that 5 day time period. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted the tenancy ended on the corrected effective date of the 10 Day Notice, July 29, 2018. Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

I accept the landlord's undisputed evidence that there is an arrear for this tenancy of \$650.00. I issue a monetary award for unpaid rent of \$650.00, pursuant to section 67 of the *Act*.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit and pet damage deposit totaling \$650.00 in satisfaction of the monetary award issued in the landlord's favour.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenants**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is authorized to retain the full amount of the security and pet damage deposit for this tenancy.

I issue a monetary order in the landlord's favour in the amount of \$100.00 which allows the landlord to recover the filing fee for their application.

The tenant must be served with this Order as soon as possible. Should the tenants 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: September 27, 2018

Residential Tenancy Branch