



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, NMDCL-S, MNRL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “*Act*”), for an order of possession for unpaid rent or utilities, a monetary order for unpaid rent or utilities and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in his testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. The Landlord testified that the documents were personally served on the Tenant on July 13, 2018. I find that the Tenant has been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present his evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Is the landlord entitled to an Order of Possession, pursuant to section 46 of the *Act*?
- Is the landlord entitled to monetary compensation for unpaid rent and utilities?
- Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on August 1, 2017, as a six-month fixed term tenancy that rolled into a month to month tenancy. It was recorded on the Tenancy agreement that the market rent for this rental unit was \$1,380.00, and that the tenant's portion of the rent was \$510.00 after a rental subsidy, and was due by the first day of each month. The Rental agreement also showed that the tenant was to pay an additional \$16.00 per month in laundry cost. The Landlord testified that he is not holding a security deposit for this tenancy.

The Landlord testified that he served the Tenant a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) on April 10, 2018. The Notice has an effective date of March 13, 2018, and an outstanding rent amount of \$1,250.00 as of April 24, 2018. The Notice informed the Tenant of the right to dispute the Notice within 5 days after receiving it. The Landlord testified that the Tenant had not served the Landlord with an application to show they had disputed the Notice.

The Landlord testified that the Tenant had not paid rent for April, May, June, July and August 2018. Additionally, the Landlord testified that there was a \$5.00 difference between what their ledger had indicated was due in rent each month, and \$16.00 difference in what was due in laundry fees for each month, in comparison to what was written in the tenancy agreement. The Landlord testified that he was agreeable to receiving rent and the Laundry fees in the amount that was recorded in the tenancy agreement.

The Landlord also testified that he was withdrawing his request for the \$509.00 due for January 2017.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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.
- (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.

I find that the Tenant did not pay the rent or dispute the Notice, and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I accept the undisputed testimony of the Landlord, and I find that the Landlord is entitled to a Monetary Order for unpaid rent and laundry fees for April, May, June, July and August 2018.

Section 55(2) of the *Act* states that a landlord may request an order of possession if a notice to end tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Pursuant to sections 55 and 67 of the *Act*, I grant the Landlord an order of possession for the rental unit and a monetary order in the amount of \$2,630.00, which is comprised of, \$2,550.00 for the outstanding rent, and \$80.00 in outstanding laundry costs.

Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee

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 find for the Landlord under sections 67 and 72 of the Act and grant the Landlord a **Monetary Order** in the amount of **\$2,730.00**. 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: September 4, 2018

Residential Tenancy Branch