



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- authorization to recover the filing fee for this application, pursuant to section 72 .

DS appeared as agent for the landlord, and had full authority to do so. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidence. The tenant did not submit any written evidence for this hearing.

The tenant confirmed that he was served with the 10 Day Notice for Unpaid Rent, which was posted on his door on June 12, 2018. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 10 Day Notice on June 15, 2018, three days after posting.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

Background and Evidence

This fixed-term tenancy began on August 15, 2017. Monthly rent is set at \$800.00, payable on the first of the month. The landlord collected, and still holds, a security deposit in the amount of \$400.00. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice on June 12, 2018, indicating an effective move-out date of June 22, 2018. The notice states that the tenant failed to pay rent in the amount of \$2,425.00 which was the total rent outstanding at the time the notice was issued. The landlord provided undisputed testimony that although the tenant has made some effort to make partial payments towards the outstanding rent, the tenant has failed to pay the full amount outstanding.

The tenant testified in the hearing that he was not disputing that he was behind in rent payments as he was facing a difficult financial situation.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 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.

It was undisputed by both parties that the tenant failed to pay the full outstanding rent within five days of being deemed to have received the 10 Day Notice. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on the corrected, effective date of June 25, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession, pursuant to section 55 of the *Act*. I find that the landlord's 10 Day Notice complies with section 52 of the *Act*.

As the landlord was successful in his application, I find that he is entitled to recover \$100.00 for the filing fee. The landlord continues to hold the tenant's security deposit of \$400.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the deposit plus interest in partial satisfaction of the monetary claim. Over the period of this tenancy, no interest is payable on the security deposit.

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. 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.

I allow the landlord to retain \$100.00 of the tenant's security deposit in satisfaction of the filing fee for this application.

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 13, 2018

Residential Tenancy Branch