



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDL, MNRL, FFL

Introduction

This hearing dealt with an application by the landlord for the following:

- An order for possession pursuant to section 49;
- A monetary order for unpaid rent pursuant to section 67;
- A monetary order for compensation pursuant to section 67; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by teleconference. The landlord attended the hearing and provided affirmed testimony. The landlord was given the opportunity to make submissions as well as present oral and written evidence.

The tenant did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled for ten minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified he personally served the tenant with the Notice of Hearing and Application for Dispute Resolution on July 12, 2018. Pursuant to section 89, I find the tenant was served with the Notice of Hearing and Application for Dispute Resolution on July 12, 2018.

At the outset of the hearing, the landlord withdrew his claim for both monetary orders. Accordingly, I dismiss the landlord's application for monetary orders without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to the following:

- An order for possession pursuant to section 49;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Background and Evidence

The landlord testified the parties entered a month-to-month tenancy beginning September 1, 2015. The parties signed a tenancy agreement which was not submitted as evidence. The landlord testified the tenant continues to reside in the rental unit.

The rent is \$1,400.00 payable on the first of the month. No security deposit was paid.

On July 3, 2018, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice") on the tenant's door for rent owing for July 2018. A copy of the Ten-Day Notice was submitted in evidence. The Ten-Day Notice provides the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of July 8, 2018, (corrected to July 16, 2018).

The landlord testified the tenant did not pay the outstanding rent in full within the 5-day period and did not make an application for dispute resolution.

The tenant paid rent for July 2018 in three installments (July 8, 13 and 16, 2018) for which the landlord issued a receipt marked, "for use and occupancy only":

The landlord testified the tenant does not currently owe any rent; however, the rent owing was not paid in full within the 5-day period.

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 52 of the *Act*.

I find the Ten-Day Notice was posted to the tenant's door on July 3, 2018. Pursuant to section 90, I find the tenant was served with the Ten-Day Notice on July 6, 2018, three days after posting, in accordance with sections 88 and 90 of the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service. Therefore, pursuant to section 46(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice (being the corrected date of July 16, 2018) requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under section 46, effective two days after service.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant.

This Order must be served on the tenant. If the tenant fails to comply with this Order, the landlord may file the Order with the Supreme Court of British Columbia to be 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 12, 2018

Residential Tenancy Branch