



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1117094 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU, MNDCL, MNRL, FFL

Introduction

This hearing dealt with the Landlord's Application filed under the *Residential Tenancy Act*, (the "Act"), for an order of possession pursuant to section 46 of the *Act*, a monetary order for unpaid rent and utilities, and to recover the cost of filing the application. The matter was set for conference call.

The Landlord attended the hearing and was affirmed to be truthful in her 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 sent by registered mail on August 16, 2018, a Canada post tracking number was provided as evidence of service. Section 90 of the *Act* determines that a document served in this manner is deemed to have been served five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present her 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?
- Is the Landlord entitled to monetary order for unpaid rent and utilities?

- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified she purchased the property as of May 13, 2018, and that the tenancy began on September 15, 2017, under the previous owner. Rent in the amount of \$1,750.00 is to be paid by the first day of each month, and that the Tenant paid the Landlord an \$875.00 security at the outset of the tenancy. The Landlord has provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that she issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10-Day Notice) to the Tenant on July 23, 2018, by registered mail, a Canada post tracking number was provided as evidence of service. The Notice has an effective date of August 3, 2018, and an outstanding rent amount of \$3,500.00. The Landlord also testified that the Tenant had not paid the full outstanding amount indicated on the Notice or served the Landlord with an application to show they had disputed the Notice.

The Landlord testified that the Tenants are still living in the rental unit and have not paid rent since receiving the Notice. Currently, there is \$8,750.00 in rent outstanding for this tenancy; consisting of June, July, August, September and October 2018. The Landlord is requesting an order of possession and the recovery of the unpaid rent.

The Landlord is also requesting to recover \$300.14 in outstanding utilities for this tenancy. The Landlord has provided copies of the electricity and heating bills into documentary evidence.

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.

Pursuant to section 90 of the *Act*, I find that the Tenant was deemed to have received the Notice on August 29, 2018. Accordingly, I find that the Tenant had until September 4, 2018, to either pay the outstanding rent as indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution. In this case, I find that the Tenant did neither and is therefore conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the 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.

Order of possession for the landlord

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, I find that the Landlord has established an entitlement to a monetary award for the outstanding rent. I grant the Landlord a monetary order in the amount of \$8,750.00; consisting of the outstanding rent for the months of June, July, August, September and October 2018.

I have carefully reviewed the tenancy agreement, and I find that it shows that this tenancy included electricity and heat and therefore, I dismiss the Landlord's claim for the recovery of \$300.14 in electricity and heating bills for this tenancy.

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 grant the Landlord a **Monetary Order** in the amount of **\$8,850.00**. 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: October 3, 2018

Residential Tenancy Branch