



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 dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on October 3, 2018, for a monetary order for unpaid rent and utilities, for permission to retain the security deposit and to recover the filing fee paid for this application. The matter was set for a conference call.

One of the Landlords and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Both parties were provided with the opportunity to present their 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

- Are the Landlords entitled to an order of possession pursuant to section 46 of the Act?
- Are the Landlords entitled to a monetary order for unpaid rent and utilities?
- Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties testified that the tenancy began on June 1, 2013, as a one-year fixed term tenancy, that rolled into a month to month after the first year. Rent in the amount of \$2,100.00 is to be paid by the first day of each month. The parties agreed that the Landlords are holding a \$1,200.00 security deposit for this tenancy.

The Landlord testified that he personally served the Tenants with the Notice to End Tenancy on October 3, 2018, with an effective date of October 13, 2018. The Notice informed the Tenants of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenants that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants are presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they did receive the Notice on October 3, 2018, and that they did not dispute the Notice or pay the outstanding rent as indicated on the Notice.

The Landlord testified that as of the date of this hearing the Tenants are outstanding \$5,148.90 in rent and utilities; consisting of \$100.00 in rent for September 2018, \$2,400.00 in rent for October 2018, 2,400.00 in rent for November 2018, and \$248.90 in utilities. The Landlord testified that he is requesting an Order of Possession to enforce his Notice and a Monetary Ordre for the outstanding rent and utilities for this tenancy.

The Tenant did not dispute the amount of outstanding rent and utilities the Landlord has requested in his claim.

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 accept the agreed upon testimony of both parties that the Landlord personally served the Tenants with the Notice to end on October 3, 2018. I also accept the agreed upon testimony of both parties that the Tenants did not pay the outstanding rent or dispute the Landlord's Notice. I find that the Tenants did not pay the rent or dispute the Notice within the legislated timeline and are 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 Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that the costs of such enforcement are recoverable from the tenant.

I accept the testimony of the Landlord that the Tenants have not paid the outstanding rent for September, October, and November 2018, for this tenancy. I find that the Landlord has proven his entitlement to a monetary award in the amount of \$4900.00 for the outstanding rent.

I also accept the testimony of the Landlord that the Tenants have not paid the outstanding utilities for this tenancy. I find that the Landlord has proven his entitlement to a monetary award in the amount of \$248.90 for the outstanding utilities.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlords have been successful in their application, I find that the Landlords are entitled to recover the \$100.00 filing fee paid for their application.

I grant the Landlords a monetary order in the amount of \$3,948.90; consisting of \$4,900.00 in unpaid rent, \$248.90 in unpaid utilities, \$100.00 for the recovery of the filing fee, less the security deposit of \$1,200.00 that the Landlord is holding for this tenancy.

Conclusion

I grant an **Order of Possession** to the Landlords effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants 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 **\$3,948.90**. The Landlords are provided with this Order in the above terms, and the Tenants 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: November 30, 2018

Residential Tenancy Branch