



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On October 23, 2018, the Landlord submitted an Application for Dispute Resolution by way of an *ex parte* Direct Request Proceeding under the *Residential Tenancy Act* (the “Act”). The Landlord requested an Order of Possession due to unpaid rent, a Monetary Order to recover the unpaid rent, and to be compensated for the cost of the filing fee. The Landlord’s evidence for the Direct Request was reviewed and found to be incomplete; therefore, the matter was set for a participatory hearing via conference call.

The Landlord attended the conference call hearing; however, the Tenant did not attend at any time during the 19-minute hearing. The Landlord testified that, while in-company his adult son, the Landlord personally served the Tenant with the Notice of Hearing by hand delivering a copy to the Tenant at the rental unit on November 8, 2018. I find that the Tenant has been duly served with the Notice of Hearing in accordance with Section 89 the Act.

Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* states if a party or their agent fails to attend a hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply.

As the Tenant did not call into the conference, the hearing was conducted in their absence and the Application was considered along with the affirmed testimony and evidence as presented by the Landlord.

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

Should the Landlord receive an Order of Possession, in accordance with Section 46 and 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord provided the following undisputed evidence:

The Landlord did not have a written Tenancy Agreement with the Tenant. The Landlord testified that the month-to-month tenancy began in March of 2017. The rent is \$600.00 and due on the first of each month. The Landlord collected and still holds a security deposit in the amount of \$300.00.

The Landlord did not submit any documentation to support his testimony that the Tenant was currently in rental arrears in the amount of \$6,000.00. The Landlord stated that the Tenant failed to pay her rent for February 2018 and then from April through to December 2018.

The Landlord stated he served a 10-Day Notice to End Tenancy for Unpaid Rent, dated October 24, 2018 (the "Notice"), to the Tenant by placing it on her door on October 24, 2018. The Landlord stated his son was with him during the service and the Landlord submitted a Proof of Service as evidence. The move-out date on the Notice was dated as November 3, 2018.

The Landlord stated that the Tenant did not pay any rent since the service of the Notice and is still living in the rental unit. The Landlord is requesting an Order of Possession for the rental unit and a Monetary Order for unpaid rent.

Analysis

The Tenant failed to pay the rent in full, as identified as owing in the Notice, within five days of receiving the Notice. The Tenant has not made Application pursuant to Section 46(4) of the Act within five days of receiving the Notice. In accordance with Section

46(5) of the Act, the Tenant's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the Notice. In this case, this required the Tenant to vacate the premises by November 3, 2018. As that has not occurred, I find that the Landlord is entitled to a two-day Order of Possession, in accordance with Section 55 of the Act. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit within the two days required, the Landlord may enforce this Order in the Supreme Court of British Columbia.

The Landlord did not provide any documentation to support his testimony regarding his loss of rental income and; therefore, I find that the Landlord has failed to provide sufficient evidence to prove the amount of his loss. As a result, I dismiss this part of the Landlord's claim with leave to reapply.

I find that the Landlord's Application has merit and find that he should be compensated for the cost of the filing fee, in accordance with Section 72 of the Act.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective two days after notice is served 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.

Pursuant to Section 72(2) of the Act, I authorize the Landlord to deduct \$100.00 from the Tenant's security deposit, in compensation for the cost of the filing fee.

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: December 10, 2018

Residential Tenancy Branch