



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution made on October 18, 2018, under the *Residential Tenancy Act* (the "Act"). The landlord initially applied by way of *ex parte* direct request proceeding, which was adjourned on November 5, 2018, to a participatory dispute resolution hearing. The landlord seeks the following remedies under sections 55, 67 and 72 of the Act:

1. an order of possession;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on December 13, 2018 and the landlord and a tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and call witnesses. The parties did not raise any issues with respect to the service of the Notice of Dispute Resolution Proceeding.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced on August 1, 2018, that monthly rent is \$2,600.00, and that there was a security deposit requirement of \$1,300.00. The security deposit cheque was returned NSF. A copy of the written tenancy agreement was submitted into evidence.

On October 13, 2018, the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on the tenant in-person. Submitted into evidence by the landlord was a photograph of the Notice.

As of the date of the hearing the tenants are in arrears for the months of October, November and December 2018, for a total amount of \$7,800.00.

The tenant testified that they have found a new place to live and that they will be moving out of the rental unit on December 14, 2018. She was unopposed to the request by the landlord for an order of possession and, in relation to the rent in arrears, explained that she intends to pay the landlord back but will need to do it in installments.

Finally, the parties briefly spoke about the lower suite in the house, and separate leases, and subleases. However, neither party submitted any evidence regarding this arrangement, and I do not find that this separate issue is of relevance to the dispute before me.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 46 of the Act, the Notice informed the tenants that the Notice would be cancelled if the tenants paid rent within five days of service. The Notice also explained that the tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

In this case, the landlord provided undisputed testimony that the tenants have not paid rent for October, November and December 2018. There is insufficient evidence before me that the tenants had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenants applied to cancel the Notice.

Taking into consideration the oral testimony of the parties, and the documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim that the tenants owe \$7,800.00 in rent, and I award him that amount.

As the landlord is successful in his claim, I grant the landlord a further monetary award in the amount of \$100.00 for recovery of the filing fee, for a total monetary order in the amount of \$7,900.00.

Turning now to the order of possession sought, section 55(2)(b) of the Act states that

A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution: [. . .]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

In this case, the landlord applied for dispute resolution seeking an order of possession, the landlord issued a notice to end the tenancy, the tenants did not dispute the Notice, and the time for making that application had expired.

Therefore, I grant the landlord an order of possession pursuant to section 55(2)(b) of the Act.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenants and is effective two (2) days from the date of service. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

I hereby grant the landlord a monetary order in the amount of \$7,900.00, which must be served on the tenants. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: December 13, 2018

Residential Tenancy Branch