



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL OPRM-DR

Introduction

On November 5, 2018 the Landlord made an Application which proceeded by way of an *ex parte* Direct Request Proceeding (the “Application”). On November 13, 2018 the Landlord’s Application was adjourned and rescheduled for a participatory hearing, seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 am on December 20, 2018, as a teleconference hearing. Only the Landlord appeared at the hearing. No one called in for the Tenant. The conference call line remained open and was monitored for 16 minutes before the call ended.

The Landlord testified he served the Application package and documentary evidence to the Tenant via Canada Post Registered Mail to the dispute address on November 15, 2018. The Landlord provided a copy of the Registered Mail receipt confirming this mailing. In the absence of evidence to the contrary, based on the written submissions of the Landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served on November 20, 2018, the fifth day after their registered mailing.

The Landlord provided affirmed testimony and was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary Matters

On December 3, 2018, the Landlord submitted an amendment to his Application, seeking a total monetary claim of \$4,500.00 for unpaid rent as follows;

- Rent owing carried over as of June 1, 2018; in the amount of \$200.00
- Rent for June 2018, in the amount of \$650.00
- Rent for July 2018, in the amount of \$650.00
- Rent for August 2018, in the amount of \$400.00
- Rent for September 2018, in the amount of \$650.00
- Rent for October 2018, in the amount of \$650.00
- Rent for November 2018, in the amount of \$650.00
- Rent for December 2018, in the amount of \$650

The Landlord states that he served a copy of the amendment to the Tenant by sliding it under the door of the rental unit. The Landlord did not serve the amendment to his Application on the Tenant using an approved form of service. In this matter, I refer to the Rule of Procedure which states;

4.2 Amending an application at the hearing:

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I find it reasonable to anticipate that the amount of rent owing has continued to increase since the time the Landlord made his Application, and will subsequently accept the amendment and include rent owed for the month of December 2018 in the Application.

Section 26(1) of the *Act* confirms:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on December 11, 2014. Rent in the amount of \$650.00 per month was due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00, which the Landlord currently holds.

The Landlord testified the Tenant did not pay rent in full when due between the months of June 2018 to December 2018. The Landlord subsequently issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 6, 2018 (the "10 Day Notice"). At that time, rent in the amount of \$1,500.00 was outstanding. The Landlord states that the 10 Day Notice was served on the Tenant in person on July 6, 2018. The 10 Day Notice provides that 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 16, 2018;

It shall be noted that the Tenant had submitted an Application to dispute the 10 Day Notice on July 12, 2018. No one appeared at the time of the Hearing which resulted in the Application being dismissed with leave to reapply. There is no evidence before me at this time that the Tenant has reapplied.

The Landlord testified that the Tenant continues to occupy the rental unit and is subsequently seeking an Order of Possession. As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord served the 10 Day Notice on the Tenant in person. Pursuant to sections 88 *Act*, I find the Tenant was duly served the 10 Day Notice on July 6, 2018. Accordingly, pursuant to section 46(4) of the *Act*, the Tenants had until July 11, 2018, to either pay rent in full or dispute the 10 Day Notice by filing an Application for dispute resolution. The Landlord testified the Tenant did not pay rent, however, did make an Application for dispute resolution on July 12, 2018. No one attended the hearing which resulted in the matter being dismissed with leave to reapply. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on July 16, 2018, the effective date of the 10 Day Notice.

I find that the Landlord is entitled to an Order of Possession, which will be effective two (2) days after it is served on the Tenant.

I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$4,500.00. Having been successful, I also find the Landlord is entitled to recover the

\$100.00 filing fee paid to make the Application pursuant to section 72 of the *Act*. Further, I find it appropriate in the circumstances to order that the Landlord is entitled to retain the security deposit held in partial satisfaction of the claim.

Pursuant to section 67 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$4,275.00, which has been calculated as follows:

Claim	Amount
Unpaid rent:	\$4,500.00
Filing fee:	\$100.00
<i>LESS</i> security deposit:	(\$325.00)
TOTAL:	\$4,275.00

Conclusion

The Landlord is granted an Order of Possession effective two days after service on the Tenant. 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 the Order may be enforced as an Order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of \$4,275.00. 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, the monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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 20, 2018

Residential Tenancy Branch