



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD FF / CNR OLC LRE FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

The landlord confirmed service of the tenant’s application. The tenant testified that he had not received any application from the landlord.

The landlord testified that on November 23, 2018, a copy of the Application for Dispute Resolution including the amended application and Notice of Hearing was sent to the tenant by registered mail. The landlord was not able to provide a registered mail tracking number in support of service during the hearing. The landlord stated he had the receipt but just not on

him at the time. The landlord was permitted to upload this proof of service evidence following the hearing and instructed to do so before the end of the business day.

The landlord uploaded the requested proof of service evidence before the end of the business day. The landlord submitted a registered mail receipt dated November 23, 2018 and tracking number. The tracking number for the item is RN307410238CA. An online delivery tracking search confirms that the item was mailed out on November 23, 2018 and a notice card was left for the recipient on December 4, 2018. The item was unclaimed.

Based on the above evidence, I am satisfied that the tenant was deemed served with the landlord's Application for Dispute Resolution, amended application and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Should the landlord be ordered to comply with the Act?

Should the landlord's access to the rental unit be restricted?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The tenancy began on August 15, 2018 with a monthly rent of \$2,300.00 payable on the 15th day of each month. The tenant paid a security deposit and pet deposit totalling \$1,350.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified the tenant failed to pay the \$2,300.00 rent payable on October 15, 2018. The landlord testified that on November 7, 2018 he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice and has not paid any rent since.

The landlord's monetary claim is for outstanding rent in the amount of \$6,900.00. The landlord testified that this includes unpaid rent that was due on October 15, 2018, November 15, 2018 and December 15, 2018.

The tenant acknowledged service of the 10 Day Notice. The tenant claimed that post-dated cheques he provided to the landlord were stolen from the landlord's car. The tenant claimed there was an ongoing police investigation and requested more time to provide the police file. The tenant claims the cheques have been cashed by someone and the money withdrawn from his account.

The landlord acknowledged the cheques were stolen but testified he notified the tenant immediately and the tenant even confirmed with him that he had put a stop payment on the cheques. The landlord testified the tenant even withheld money for the stop payment charges from a previous rent payment which he permitted.

Analysis

I am satisfied that the tenant was served with the 10 Day Notice on November 7, 2018.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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 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.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenant acknowledged rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. The tenant has failed to establish that it was the landlord that allegedly cashed these cheques or if in fact these cheques have even been cashed. The tenant submitted no bank statements or evidence that would support his testimony that the cheques have even been cashed as claimed.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

I accept the landlord's claim for outstanding rent of \$6,900.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$7,000.00.

The landlord continues to hold a security and pet deposit of \$1,350.00. I allow the landlord to retain these deposits in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$5,650.00.

As this tenancy has ended and the tenant was not successful in this application, the remainder of the tenant's application is also dismissed without leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,650.00. 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: December 20, 2018

Residential Tenancy Branch