



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1140375 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, FFL

Introduction

This decision is in respect of the applicant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The applicant seeks the following remedies:

1. an order of possession for unpaid rent;
2. a monetary order for unpaid rent and loss of revenue; and.
3. a monetary order for the filing fee, pursuant to section 72 of the Act.

A dispute resolution hearing was convened, and the landlord's agent attended. He was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The tenant did not attend.

The agent testified that the Notice of Dispute Resolution Proceeding package was served on the tenant in-person on December 10, 2018. I find that the tenant was served with the Notice of Dispute Resolution Proceeding package pursuant to section 89 of the Act.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, 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 agent testified that while he was uncertain as to when the tenancy commenced—the landlord having taken over from the previous landlord in early 2018—monthly rent is \$400.00, due on the first of the month. The agent further testified that the tenant has not paid rent for October 2018 to January 2019, inclusive, and is currently in arrears in the amount of \$1,600.00.

The agent testified that his employee (S.A.) served a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) on the tenant by registered mail on November 2, 2018. The mail was returned unclaimed by the tenant. A copy of the 10 Day Notice was submitted into evidence.

The agent stated that the landlord waives its claim for recovery of the filing fee, due to the tenant’s financial circumstances. I confirmed that this aspect of their claim would be withdrawn.

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 tenant that the Notice would be cancelled if he paid rent within five days of service. The Notice also explains that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The agent testified, and provided documentary evidence to support their submission, that the tenant did not pay rent when it was due. Further, there is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and, no evidence indicating that he applied to cancel the Notice.

Taking into consideration all the undisputed oral testimony and 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 its claim for unpaid rent in the

amount of \$1,600.00. A monetary order for this amount is issued to the landlord, in concurrence with this Decision.

Subsection 55(2)(c) of the Act states that a landlord may request an order of possession of a rental unit when 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.

Applying section 55 of the Act to the unchallenged testimony regarding the tenant's failure to pay rent for October 2018 through January 2019, inclusive, and regarding the tenant's failure to apply for dispute resolution, pursuant to sections 46 and 55 of the Act, I hereby grant an order of possession to the landlord.

Conclusion

I hereby grant the landlord an order of possession, which must be served on the tenant and is effective two 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 grant the landlord a monetary order in the amount of \$1,600.00, which must be served on the tenant. 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: January 21, 2019

Residential Tenancy Branch