



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, OPB, FFL

Introduction

This hearing originated as a direct request proceeding. In an Interim Decision dated November 15, 2018, a participatory hearing was Ordered. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:35 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and her counsel attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, her counsel and I were the only ones who had called into this teleconference.

Counsel for the landlord submitted that the notice of dispute resolution hearing and the Interim Decision package were sent to the tenant via registered mail on November 23, 2018. The Canada Post receipt and tracking number were entered into evidence. I find that the tenant was deemed served with this package on November 28, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Counsel for the landlord submitted that the landlord filed an Amendment on December 20, 2018 for an Order of Possession for breach of vacate clause, pursuant to section 55 of the *Act*. Counsel for the landlord submitted that the tenant was served with this Amendment via registered mail on December 20, 2018. The Canada Post receipt and

tracking number were entered into evidence. I find that the tenant was deemed served with this package in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?
4. Is the landlord entitled to an Order of Possession for breach of vacate clause, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord and her counsel, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on June 1, 2017 and is currently ongoing. On December 23, 2017, the parties signed a tenancy agreement which states the term of the tenancy as July 1, 2017 to June 30, 2018. This tenancy agreement was entered into evidence. Monthly rent in the amount of \$1,000.00 is payable on the first day of each month. No security deposit or pet damage deposit was paid to the landlord from the tenant because the landlord did not request them.

The landlord testified that at the time the parties entered into the tenancy agreement she verbally told the tenant that he would have to move out of the subject rental property at the end of the term, that being June 30, 2018 because she planned on moving back into the subject rental property. The landlord testified that the tenant knew of her intention to move back into the property and agreed that he would move out of the subject rental property on June 30, 2018. The landlord testified that the tenant refused to move out on June 30, 2018 as he had previously agreed.

The landlord testified that the tenant did not pay any rent for June or July 2017 and only ½ month's rent for August 2017. The landlord testified that at the time the tenancy

agreement was entered into, the tenant was known to her and that she believed the tenant would pay her the outstanding funds; however, he did not.

The landlord testified that on September 07, 2018 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of September 19, 2018 (the "10 Day Notice"). A witnessed proof of service document stating same was entered into evidence. The 10 Day Notice states that the tenant owes the landlord \$2,500.00 that was due on August 1, 2017. The landlord testified that the tenant has not paid her the outstanding funds.

Counsel submitted that he and the landlord were not aware of any application from the tenant to cancel the 10 Day Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be personally served on the tenant. I accept the landlord's testimony that the 10 Day Notice was personally served on the tenant on September 07, 2018. Upon review of the 10 Day Notice, I find that it meets the form and content requirements of section 52 of the *Act*.

Section 46 of the *Act* states:

- 46** (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (3)A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4)Within 5 days after receiving a notice under this section, the tenant may
- (a)pay the overdue rent, in which case the notice has no effect, or
 - (b)dispute the notice by making an application for dispute resolution.
- (5)If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

Based on the undisputed testimony of the landlord, I find that the tenant failed to pay rent in the amount of \$2,500.00 from June – August 2017 and did not pay the outstanding funds to the landlord within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day 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 his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by September 19, 2018, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. 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 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$1,000.00 on the first day of each month from June to August 2017 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$2,500.00 in unpaid rent.

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenant.

Since I have found that the landlord is entitled to an Order of Possession pursuant to the 10 Day Notice and section 55 of the *Act*, I decline to consider if the landlord is entitled to an Order of Possession for breach of vacate clause.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service 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.

I issue a Monetary Order to the landlord in the amount of \$2,600.00.

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, 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: January 07, 2019

Residential Tenancy Branch