



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF

Introduction

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 section 55;
- a monetary order for unpaid rent pursuant to section 67; and,
- authorization to recover the filing fee for this application pursuant to section 72.

This application was originally heard by way of a Direct Request Proceeding and on December 4, 2018 an interim decision was issued adjourning the application to be reconvened at a participatory hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, present evidence and make submissions.

The landlord testified that on December 21, 2018, he personally served both the tenants with a copy of the Application for Dispute Resolution including the Notice of Hearing and Interim Decision.

Based on the above evidence, I am satisfied that the tenants were personally served with the Application for Dispute Resolution, Notice of Hearing and Interim Decision pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenants.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for the months of November 2018, December 2018 and January 2019. Although the tenants did not have prior notice of this claim, I find that the tenants should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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

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

Background and Evidence

The tenancy began on September 1, 2017 with a monthly rent of \$700.00 payable on the 1st day of each month. The tenants paid a security deposit of \$350.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on October 7, 2018 he personally served the tenants with the 10 Day Notice. The landlord testified that both tenants were home at the time of service. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord's monetary claim including the amount amended in this hearing is for outstanding rent in the amount of \$4900.00. The landlord testified that this includes unpaid rent for the period of July 2018 to January 2019.

Analysis

I am satisfied that the tenants were personally served with the 10 Day Notice on October 7, 2018 pursuant to section 88 of the Act.

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 10 Day Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

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.

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.

I accept the landlord's uncontested evidence and claim for outstanding rent of \$4900.00.

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 \$5000.00.

The landlord continues to hold a security deposit of \$350.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 72 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$4650.00.

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 \$4650.00. 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: January 18, 2019

Residential Tenancy Branch