



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, OPR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession pursuant to sections 46 and 55;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The tenant did not submit any documentary evidence. Neither party raised service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

Preliminary Issue(s)

During the hearing it was clarified by the landlord that the request for an order of possession based upon the 4 month notice was premature and as such is cancelled by the landlord.

The hearing proceeded on the remaining issues of the 10 Day Notice and recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to recovery of the filing fee?

Background, Evidence, Analysis and Conclusion

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that the tenant was served with a 4 Month Notice to End Tenancy dated November 11, 2018 to "perform renovations or repairs that are so extensive that the rental unit must be vacant" and provides for an effective end of tenancy date of March 10, 2019. The landlord stated that the tenant was served on November 11, 2018 by posting it to the rental unit door.

It was clarified with both parties that the tenant did receive the 4 month notice in person on November 10, 2018 as opposed to the posting as explained by the landlord. Neither party raised any further service issues.

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent dated November 25, 2018 which states in part that the tenant failed to pay rent of \$820.00 that was due on November 1, 2018 and provides for an effective end of tenancy date of December 25, 2018. The landlord stated that the tenant was served with the 10 Day Notice in person on November 25, 2018.

The tenant provided undisputed affirmed testimony that he in fact did not pay the rent as claimed by the landlord or any further rent as of the date of this hearing. The tenant also stated that he has not filed an application for dispute.

Extensive discussions took place during the hearing in which both parties agreed that there have been some communication issues between them.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on April 1, 2019, by which time the tenant will have vacated the rental unit.

The landlords agreed to withdraw the Application for Dispute in its entirety.

Both parties agreed that the landlord shall forgive rent as provided for in the tenancy agreement for the 4 month period (November 2018, December 2018, January 2019 and February 2019). The tenant agreed to pay to the landlord rent owed for March 2019 when due.

Both parties agreed that the above noted particulars comprised a full and final settlement of all aspects of the dispute arising from their applications for dispute resolution.

The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter.

In order to implement the above settlement reached between the parties, I issue an Order of Possession to be used by the landlord if the tenants fail to vacate the rental premises in accordance with their agreement by 1:00 pm on April 1, 2019. The landlord is provided with this order in the above terms and the tenant(s) must be served with this Order in the event that the tenants do not vacate the premises by the time and date set out in their agreement. Should the tenants fail to comply with this Order, the Order may be filed and enforced as an Order of the Supreme 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 *Residential Tenancy Act*.

Dated: January 21, 2019

Residential Tenancy Branch