



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This hearing originated as a Direct Request proceeding; however, in an Interim Decision dated December 06, 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 9:44 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was 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 and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served the notice of reconvened hearing, Interim Decision and the landlord's evidence package by registered mail on December 15, 2018. The landlord testified that he did not have the Canada Post receipt with him and so was unable to provide the Canada Post tracking number. I find that the tenant was deemed served with this package on December 20, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Preliminary Issue- Amendment

The landlord's original application claimed unpaid rent in the amount of \$497.50. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$1,437.50.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an

application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$1,437.50.

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 tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of his 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 April 1, 2018 and is currently ongoing. Monthly rent in the amount of \$995.00 is payable on the first day of each month. A security deposit of \$497.50 was paid by the tenant to the landlord.

The landlord testified that on November 9, 2018 the tenant was personally served with a 10 Day Notice to End Tenancy for unpaid rent with an effective date of November 9, 2018 (the "10 Day Notice"). The 10 Day Notice was entered into evidence. The landlord entered a witnessed proof of service document into evidence confirming same.

The landlord testified that the tenant failed to pay rent in the amount of \$995.00 on November 1, 2018, when it was due. The landlord testified that after receiving the 10 Day Notice, the tenant paid the following payments towards rent:

- November 9, 2018- \$497.50;
- December 15, 2018- \$800.00; and
- December 22, 2018- \$250.00.

The landlord testified that the tenant has not paid any money towards rent since December 22, 2018 and currently owes \$1,437.50 in unpaid rent for the months of November 2018- January 2019.

The tenant did not file an application with the Residential Tenancy Branch to dispute 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 evidence that the 10 Day Notice was personally served on the tenant on November 9, 2018. I find that service of the 10 Day Notice was effected on the tenant on November 9, 2018.

Upon review of the 10 Day Notice I find that it meets the form and content requirements of section 52 of the *Act*.

Based on the evidence of the landlord I find that the tenant failed to pay all of the outstanding rent stated as due in the 10 Day Notice, 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.

Section 53(2) of the *Act* states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section. The earliest date permitted under section 46 is November 19, 2018. I find that the corrected effective date of the 10 Day Notice is November 19, 2018.

In this case, this required the tenant to vacate the premises by November 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 \$995.00 on the first day of each month from November 2018 to January 2019 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,437.50 in unpaid rent.

Since the landlord was success in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

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 \$1,537.50. 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 24, 2019

Residential Tenancy Branch