



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on October 17, 2018, and to recover the filing fee paid for this application. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the Act?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Parties agreed that the tenancy began on July 3, 2008, as a six-month fixed term tenancy, that rolled into a month to month after the initial term. Rent in the amount of \$1,400.00 is to be paid by the first day of each month. The parties agreed that the Landlord is holding a \$600.00 security deposit for this tenancy.

The Landlord testified that there is no pet damage deposit for this tenancy. The Tenant testified that she did pay a pet damage deposit, although the Tenant could not recall how much the pet damage deposit had been.

Both parties agreed that the rent for this rental unit had originally be \$1,200.00 per month, and that after the initial term ended the rent was increased to \$1,400.00 per month. The Landlord testified that the increase in rent had been through a negotiated mutually agreed, made on November 2008. The Landlord submitted a copy of the tenancy agreement into evidence, noting that the change in rent had been recorded on the tenancy agreement and signed by the Tenant.

The Tenant agreed that there had been an agreement between the Landlord and herself regarding the change in rent. The Tenant also testified that she had never disputed the change in rent or the terms of the mutual agreement and has been paying \$1,400.00 per month in rent since November 2008.

The Landlord testified that he personally served the Tenant's roommate with the Notice to End Tenancy on October 17, 2018, with an effective date of October 26, 2018. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenants are presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that she had receive the Notice on October 16, 2018, and that she did not dispute the Notice or pay the outstanding rent within five days as indicated on the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the agreed upon testimony of both parties the rent for this tenancy is \$1,400.00 per month. I also accept the agreed upon testimony of both parties that the Landlord personally served the Tenant with the Notice to end tenancy on October 17, 2018.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

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.

Additionally, I accept the agreed upon testimony of both parties that the Tenant did not pay the outstanding rent or dispute the Landlord's Notice within five days of receiving

the Notice. Consequently, I find that the Tenant did not pay the rent or dispute the Notice within the legislated timeline and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if 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.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in his application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for his application. I grant permission to the Landlord to keep \$100.00 from the security deposit in full satisfaction of this award.

Conclusion

I grant an **Order of Possession** to the Landlords effective **two days** after service on the Tenants. The Tenants must be served with this Order. Should the Tenants fail to

comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant permission to the Landlord to keep **\$100.00** from the security deposit for this tenancy, in full satisfaction of the award contained in my decision.

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 28, 2019

Residential Tenancy Branch