



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 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 from the tenant pursuant to section 72.

The landlord's agent, the landlord and the tenant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The agent stated that they would be the primary speaker for the landlord.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Application for Dispute Resolution (the Application) and evidence were served to the tenant by registered mail on January 09, 2019. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing.

The tenant disputed service of the Application and evidence, stating that the landlord confiscates their mail.

Having reviewed the evidence, I accept the landlord's testimony regarding service and in accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the Application and evidence on January 14, 2019.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

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

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

Background and Evidence

The agent and the tenant agreed that this tenancy began on July 01, 2017, with a current monthly rent of \$1,100.00, due on the first day of each month. Both parties agreed that the landlord retains a security deposit in the amount of \$550.00.

The landlord provided in evidence:

- A copy of the signed 10 Day Notice, dated December 16, 2018, for \$80.00 in unpaid rent with an effective date of December 26, 2018, was included in the landlord's evidence. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end;
- Witnessed documentary evidence which indicates that the 10 Day Notice was posted to the tenant's door at 7:00 p.m. on December 16, 2018;
- A copy of a Monetary Order Worksheet showing the rent owing and paid during the relevant portion of the tenancy. The Monetary Order Worksheet noted that \$400.00 of the \$800.00 identified as owing in the 10 Day Notice was paid on December 21, 2018, and another \$300.00 was paid on January 02, 2019;
- A copy of a receipt dated January 01, 2019, which indicates that \$300.00 was taken from the security deposit to apply towards November and December rent and that \$200.00 remains owing for those months; and
- A copy of a receipt dated January 01, 2019, which indicates that \$300.00 was paid to apply towards January 2019 rent and that \$800.00 still remains owing for that month.

The agent testified that the tenant did not pay the full amount of rent owing for December 2018 rent until January 01, 2019, at which time the rent for January 2019 became owing in the amount of \$1,100.00. The landlord submitted that the tenant paid \$300.00 towards January 2019 rent on January 01, 2019, but that January 2019 rent was not completely paid until February 07, 2019, when the tenant paid \$500.00, of which \$200.00 was applied to January 2019 unpaid rent and the remaining \$300.00 was applied to February 2019 rent. The landlord testified that the tenant still owes \$800.00 for February 2019 rent. The landlord testified that they are seeking to end the tenancy due to the unpaid rent which continues to not be paid.

The tenant disputed getting the 10 Day Notice from the landlord. The tenant stated that they paid an additional \$400.00 to the landlord on February 08, 2019, that they have a

receipt for but did not have an opportunity to provide in evidence. The tenant confirmed that there is still outstanding rent owing for February 2019 but disputed that amount of unpaid rent being claimed by the landlord.

The tenant was given until the end of the business day to provide the landlord and the Residential Tenancy Branch with the receipt showing the payment made on February 08, 2019; however no receipt was provided for consideration in the time allotted.

Analysis

Based on a balance of probabilities, I prefer the landlord's evidence and testimony regarding service of the 10 Day Notice to the tenant. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed served with the 10 Day Notice on December 19, 2018, three days after its posting.

Section 26 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's evidence and the testimony of both parties, I find the tenant failed to pay the full amount of rent owing as stated on the 10 Day Notice within five days of receiving it and did not make an application pursuant to section 46(4) of the *Act* within the same timeframe. In accordance with section 46(5) of the *Act*, due to the failure of the tenant to take either of these actions within five days, I find the tenant is conclusively presumed to have accepted the end of this tenancy on December 29, 2018, the corrected effective date on the 10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by December 29, 2018.

As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the landlord's evidence and the testimony of both parties, I find the landlord is entitled to a monetary award of \$800.00 for unpaid rent owing for February 2019. As the landlord has been successful in this application, I allow them to recover their \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) or anyone on the premises 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 a Monetary Order in the amount of \$900.00 which allows the landlord to recover unpaid rent and to recover the filing fee from the tenant. The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 22, 2019

Residential Tenancy Branch