



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPM OPR MNR MNSD FF / CNR OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession based on a mutual agreement to end tenancy pursuant to section 55;
- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:22 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord filed two separate applications both of which were scheduled to be heard on this date. The landlord testified that on January 18, 2019, he served a copy of his first Application for Dispute Resolution and Notice of Hearing to the tenant by leaving a

copy in the tenant's mailbox. The landlord testified that his second application was sent to the tenant by registered mail on February 4, 2019. The landlord provided a registered mail receipt and tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with both of the landlord's Applications for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Issues

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to retain the tenant's security deposit.

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

Background and Evidence

The tenancy began on March 30, 2018 with a monthly rent of \$2450.00 payable on the 1st day of each month. The tenant paid a security deposit of \$1225.00 at the start of the tenancy.

The landlord testified that on November 15, 2018 the parties entered into a mutual agreement to end the tenancy effective January 15, 2019. A signed Mutual Agreement to End Tenancy form was provided with the application. The landlord testified that he had agreed to allow the tenant to only pay one half the rent for December 2018 and to retain the security deposit to cover the other half. The landlord testified that the tenant has however failed to vacate or pay any rent since December 1, 2018.

The landlord's claim is for outstanding rent in the amount of \$7350.00. The landlord testified that this includes unpaid rent for the months of December 2018, January and February 2019. The landlord asked to amend his original claim to include the outstanding rent for February 2019. Although the tenant did not have prior notice of this claim, I found that the tenant 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 amendment.

Analysis

Pursuant to section 44(1)(c) of the Act, a tenancy ends if the landlord and tenant agree in writing to end the tenancy. Pursuant to section 55(2)(d) of the Act, a landlord may request an order of possession of a rental unit if the landlord and tenant have agreed in writing that the tenancy has ended.

The tenant and landlord agreed in writing that the tenancy would end on January 15, 2019. The landlord was entitled to possession of the rental unit effective this date.

The landlord is granted an Order of Possession pursuant to section 55 of the Act.

As the landlord has been granted an order of possession based upon a mutual agreement, the landlords request for an order of possession based upon a 10 Day Notice is moot.

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 find that the tenant was obligated to pay monthly rent in the amount of \$2450.00 but has failed to pay any rent for the months of December 2018, January and February 2019. I accept the landlord's claim for outstanding rent of \$7350.00.

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 \$7450.00.

The landlord continues to hold a security deposit of \$1225.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$6225.00.

As the tenant failed to attend this hearing, the tenant's application is dismissed without leave to reapply.

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 \$6225.00. 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: February 26, 2019

Residential Tenancy Branch