Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNRL, 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 sections 46 and 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 property manager (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.

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 tenant acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package sent by way of registered mail on February 01, 2019. In accordance with sections 88 and 89 of the *Act*, I find that the tenant was duly served with the Application and evidentiary package.

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 landlord provided written evidence that this tenancy began on April 01, 2017, with a current monthly rent of $809.00 due on the first day of each month. The landlord further testified that they did not obtain a security deposit from the tenant.

A copy of the signed 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) identifying $3,125.34 in unpaid rent dated November 16, 2018, with an effective date of November 30, 2018, was included in the landlord's evidence. The 10 Day Notice states that the tenants 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 provided by the landlord indicates that the 10 Day Notice was personally handed to the tenant on November 16, 2018.

The landlord also provided a tenant ledger showing the rent owing and paid during the relevant portion of the tenancy. The ledger shows that a payment of $650.00 was received from the tenant on December 18, 2018, and a payment of $650.00 received on January 04, 2019, since the 10 Day Notice was issued.

The landlord testified that they are seeking to end the tenancy due to the unpaid rent. The landlord submitted that the tenants are in subsidized housing and are required to provide the landlord with their tax information for the purpose of calculating their tenant rent contribution but have failed to do so for the last two years. The landlord testified that the tenant rent contribution varies over months at a time due to tax information provided by the tenant.

The landlord stated that they have been working with the tenant regarding their rental arrears and have attempted payment plans but that the tenant does not follow through with the plans put in place. The landlord testified that the current rent amount owing from the tenant is $1,383.34. The tenant submitted that they are seeking on Order of Possession effective as of March 31, 2019.

The tenant acknowledged receipt of the 10 Day Notice. The tenant did not dispute the amount of unpaid rent. The tenant stated that they have the balance of rent and can now pay the landlord if the tenancy is allowed to continue.

Analysis
I have reviewed all documentary evidence and in accordance with section 88 of the *Act*, I find that the 10 Day Notice was duly served to the tenant on November 16, 2019.

Based on the landlord's evidence and the testimony of both parties, I find that the tenant failed to pay any rent within five days of receiving the 10 Day Notice 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 tenants to take either of these actions within five days, I find that the tenants is conclusively presumed to have

accepted the end of this tenancy on November 30, 2018, the effective date on the 10 Day Notice. In this case, the tenants and anyone on the premises were required to vacate the premises by November 30, 2018. As this has not occurred, I find that the landlord is entitled to an Order of Possession effective as of March 31, 2019.

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 $1,383.34 for unpaid rent owing for this tenancy. 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 **on March 31, 2019, after service of this Order** on the tenant. Should the tenant 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 landlord's favour in the amount of $1,483.34, which allows the landlord to recover unpaid rent and to recover the filing fee. 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: March 14, 2019

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Residential Tenancy Branch