



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied 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, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 17 minutes. The landlord’s two agents (collectively “landlords”) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that they had authority to speak behalf of the landlord owner (“landlord”) named in this application at this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord’s paper application only, not any participation by the tenant. An “interim decision,” dated February 1, 2019, was issued by an Arbitrator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. The landlords stated that the tenant was served with the above documents on February 7, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the interim decision and

notice of reconvened hearing on February 12, 2019, five days after its registered mailing.

The landlords claimed that the tenant was served with the landlord's original application for dispute resolution by direct request on January 22, 2019, by way of registered mail to the rental unit where the tenant is residing. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's original application on January 27, 2019, five days after its registered mailing.

The landlords confirmed that the tenant was served with an increased monetary order worksheet to include February and March 2019 unpaid rent amounts, by way of registered mail to the rental unit where the tenant is residing on February 22, 2019. The landlords provided a Canada Post tracking number verbally during the hearing. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's increased monetary order worksheet on February 27, 2019, five days after its registered mailing.

The landlords stated that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 8, 2019, ("10 Day Notice") by way of registered mail on the same date. The landlord provided a Canada Post receipt and tracking number with this application. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on January 13, 2019, five days after its registered mailing.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include February and March 2019 rent, totalling \$2,700.00. The landlord served a new monetary order worksheet with this application to increase the landlord's monetary claim to include the above unpaid rent amounts and I find that the tenant was deemed served with this worksheet, as noted above. I find that the tenant is aware that rent is due as per his tenancy agreement. The tenant continues to reside in the rental unit, despite the fact that a 10 Day Notice required him to vacate earlier, for failure to pay the full rent due. Therefore, the tenant knew or should have known that by failing to pay his rent, the landlord would pursue all unpaid rent at this hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claims for increased rent, despite the fact that he did not attend this hearing.

Issues 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 paid for this application?

Background and Evidence

The landlords testified regarding the following facts. This tenancy began on July 1, 2013 for a fixed term tenancy ending on June 30, 2014, after which it became a month-to-month tenancy. Monthly rent in the amount of \$1,350.00 is payable on the first day of each month. A security deposit of \$675.00 and a pet damage deposit of \$675.00 were paid by the tenant and the landlord continues to retain both deposits. The tenant signed the written tenancy agreement in the wrong space, below the name of his girlfriend that was crossed out because she never lived in the rental unit. A copy of the tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit.

The landlord issued the 10 Day Notice, which has an effective move-out date of January 23, 2019, indicating that rent in the amount of \$1,350.00 was due on January 1, 2019. The landlord provided a copy of the notice. The landlords explained that the tenant failed to pay rent of \$1,350.00 for each month from January to March 2019, totalling \$4,050.00.

The landlord seeks an order of possession based on the 10 Day Notice, a monetary order of \$4,050.00 for unpaid rent from January to March 2019, and the \$100.00 filing fee paid for this application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on January 1, 2019, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on January

23, 2019, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by January 23, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant pursuant to section 55 of the *Act*, as the 10 Day Notice complies with section 52 of the *Act*.

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$1,350.00 for each month from January to March 2019, inclusive. Therefore, I find that the landlord is entitled to \$4,050.00 in rental arrears from the tenant.

The landlord continues to hold the tenant's security deposit of \$675.00 and pet damage deposit of \$675.00. Although the landlord did not apply to retain the deposits, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposits, totalling \$1,350.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 application 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. 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.

I order the landlord to retain the tenant's security deposit of \$675.00 and pet damage deposit of \$675.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$2,800.00 against the tenant, for the balance due. 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: March 18, 2019

Residential Tenancy Branch