



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPRM-DR, FFL

For the tenant: CNC, CNR, MT, ERP

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 4, 2019 (“10 Day Notice”), to cancel a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”), for more time to make an application to dispute a Notice to End Tenancy, and for emergency repairs for health or safety reasons.

Landlord KS (“landlord”) attended the teleconference hearing. The tenant did not attend the hearing although the tenant was provided with a copy of the Notice of Dispute Resolution Hearing (“Notice of Hearing”) dated February 28, 2019 when the tenant filed their application. After the mandatory ten minute waiting period, the tenant’s application was **dismissed in full without leave to reapply** as the tenant failed to call into the teleconference to present the merits of their application and the landlord did call into the hearing and were prepared to proceed. I find the teleconference codes, date and time provided to both parties to be accurate and confirm that the only persons to call into the hearing were myself and the landlord who called in with the same phone number which left only two parties on the line for the entire hearing according the teleconference system which I monitored throughout the hearing which lasted 19 minutes. Based on the above, I find the 10 Day Notice to be undisputed as the tenant did not attend the teleconference and the tenant’s application was dismissed without leave to reapply as a result.

The hearing process was explained to the landlord, and the landlord was given an opportunity to ask questions about the hearing process. Thereafter the landlord gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me. I have reviewed all 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.

The landlord affirmed that the tenant was served with their application, Notice of Hearing and documentary evidence by registered mail dated March 15, 2019. The registered mail tracking number was included in evidence and has been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, the tenant did not pick up the registered mail package. Section 90 of the *Act* stated that documents served by registered mail are deemed served five days after they are mailed. Based on the above, I am satisfied that the tenant was sufficiently served as required by the *Act*, and is deemed served as of March 20, 2019. I find the landlords' application is unopposed by the tenant as the tenant was served and did not attend the hearing to dispute the landlord's application.

Preliminary and Procedural Matters

Email addresses were provided by both parties in their respective applications. As such the decision will be emailed to the parties and the landlords will be provided with any applicable orders by email.

Furthermore, the landlord testified that in addition to the rent owed for March 2019, the tenant has subsequently not paid the rent for April 2019. As a result, the landlord requested to amend the application to include rent owed for April 2019 of \$1,892.00. The landlord also stated that the tenant continues to occupy the rental unit. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, pursuant to section 64(3) of the *Act*, I amend the application to \$3,784.00, which consists of \$1,892.00 for unpaid rent and loss of rent for the months of March and April of 2019.

Issues to be Decided

- Are the landlords entitled to an order of possession under the *Act*?

- Are the landlords entitled to a monetary order under the *Act*, and if so, in what amount?
- Are the landlords entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2018 and was scheduled to revert to a month to month tenancy after April 30, 2019. The tenant paid a security deposit of \$912.50 and a pet damage deposit of \$400.00, which the landlords continue to hold. The combined deposits total \$1,312.50.

A copy of the 10 Day Notice was submitted in evidence. The landlords stated that the 10 Day Notice was personally served on March 5, 2019 at the rental unit address and was witnessed by RP. The amount owing indicates \$1,892.00 due March 1, 2019 and the landlords stated that since that date, the tenant has failed to pay \$1,892.00 for April 2019 and continues to reside in the rental unit. The effective vacancy date listed on the 10 Day Notice is March 14, 2019.

Analysis

Based on the undisputed testimony of the landlord and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

10 Day Notice – Firstly, I find the tenant failed to dispute the 10 Day Notice by failing to attend this hearing. Secondly, I accept the undisputed evidence before me from the landlords which I find fully supports the landlords' claim. Therefore, pursuant to section 46 of the *Act* I find the tenant is conclusively presumed under the *Act* to have accepted the effective vacancy date which automatically corrects to March 15, 2019 under section 53 of the *Act* as the tenant was served personally on March 5, 2019. Section 55 of the *Act* applies and states:

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.

[Emphasis added]

As a result and taking into account that I find the 10 Day Notice complies with section 52 of the *Act*, and that the tenant failed to pay the amount of rent owing as indicated on the 10 Day Notice within the timeline provided for under the *Act*, I grant the landlords an order of possession effective **two (2) days** after service on the tenant as the tenant continues to occupy the rental unit.

Unpaid rent – Based on the above, I find the tenant has breached section 26 of the *Act* which states:

Rules about payment and non-payment of rent

26 (1) 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.

[Emphasis added]

I accept the landlord's undisputed testimony that the tenant owes a total of **\$3,784.00** in unpaid rent and loss of rent as claimed for March and April of 2019. As the landlords have succeeded with their application, I grant the landlords the recovery of the cost of the **\$100.00** filing fee pursuant to section 72 of the *Act*.

Monetary Order – I find the landlords have established a total monetary claim of **\$3,884.00** comprised of \$3,784.00 in rent arrears, plus the recovery of the \$100.00 filing fee. Pursuant to section 72 of the *Act*, I authorize the landlords to retain the tenant's full security deposit of \$912.50 and pet damage deposit of \$400.00 which have accrued no interest in partial satisfaction of the landlords' monetary claim. I grant the landlords a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of **\$2,571.50**.

Conclusion

The tenant's application is dismissed, without leave to reapply, as indicated above.

The landlords' application is fully successful. I find the tenancy ended on March 15, 2019, which is the corrected effective date of the 10 Day Notice. The landlords have been granted an order of possession effective two (2) days after service on the tenant. The landlords must serve the tenant with the order of possession and the order of possession may be filed in the Supreme Court of British Columbia to be enforced as an order of that court.

The landlords have established a total monetary claim of \$3,884.00 as described above. The landlords have been authorized to retain the tenant's full security deposit of \$912.50 and pet damage deposit of \$400.00, which have accrued no interest, in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenant to the landlords in the amount of \$2,571.50. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to both parties and the orders will be emailed to the landlords for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 11, 2019

Residential Tenancy Branch