



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, RP, RR, MNDC, FF, MNR, OPR

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on April 4, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for emergency and other repairs - Section 32;
3. An Order for a rent reduction - Section 65;
4. A Monetary Order for compensation for loss - Section 67; and
5. An Order to recover the filing fee - Section 72.

The Landlord applied on April 17, 2019 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. It was confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing to the Tenant for the hearing on its application. As the Tenant did not appear at the hearing to pursue its own application I dismiss its application.

The Landlord states that its application, notice of hearing and initial evidence (the “Materials”) was served to the Tenant by registered mail on April 26, 2019 to the post

office box address provided by the Tenant in its application. The Landlord served its remaining evidence to the Tenant by registered mail on May 5, 2019.

Section 71(2)(c) of the Act provides that the Director may order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the undisputed evidence that the Tenant included the post office address in its application for dispute resolution I find that the Landlord has sufficiently served the Materials and remaining evidence to the Tenant. Given the evidence of registered mail I find that the Tenant is deemed to have received the Materials on May 1, 2019.

The Landlords were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

There is no written agreement. The tenancy started on March 1, 2018. Rent of \$650.00 is payable on the first day of each month. No security deposit was collected by the Landlord. The Tenant owed rental arrears and on April 3, 2019 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant did not dispute the Notice and the Landlord does not know if the Tenant has moved out of the unit. The Tenant did not pay the arrears set out on the Notice. The Landlord claims an order of possession for as soon as possible and unpaid rent of \$6,285.00.

The Landlord provides a copy of a rental spread sheet setting out the dates of rental payments and rents owing.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Section 55(2) of the Act provides that where a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired, a landlord may request an order of possession. Based on the Landlord's undisputed evidence I find that the Landlord gave the Tenant the Notice and that the Tenant did not dispute the Notice or pay the rental arrears within the time allowed. As a result I find that the Landlord is entitled to an order of possession.

Section 26 of the Act provides 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. Based on the Landlord's undisputed evidence of the terms of the tenancy, I find that the Parties entered into an oral tenancy agreement and that the Tenant was required to pay monthly rent of \$650.00. Based on the Landlord's undisputed and supported evidence of rents not paid I find that the Landlord has substantiated an entitlement to **\$6,285.00**. As the Landlord has been successful with its application I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$6,385.00**.

Conclusion

I grant an Order of Possession to the Landlord. The Tenant must be served with this **Order of Possession**. Should the Tenant fail to comply with the order, the order may

be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

I grant the Landlord an order under Section 67 of the Act for **\$6,385.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: May 21, 2019

Residential Tenancy Branch