



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with the Landlord's Application by Direct Request Proceeding, made on April 11, 2019, which was adjourned to a participatory hearing (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- an order of possession for unpaid rent or utilities; and
- an order granting recovery of the filing fee.

The Landlord attended the hearing at the appointed date and time, and provided affirmed testimony. The Tenant did not attend the hearing.

The Landlord testified the Notice of Dispute Resolution Hearing and documentary evidence was served on the Tenant in person on April 13, 2019. In the absence of evidence to the contrary, I find these documents were served on and received by the Tenant on April 13, 2019.

The Landlord was given the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written 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.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the fixed-term tenancy began on September 1, 2018, and was expected to continue to August 31, 2019. Rent in the amount of \$1,400.00 per month is due on or before the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 and a pet damage deposit of \$700.00, which the Landlord holds.

The Landlord testified the Tenant did not pay rent when due on April 1, 2019. Accordingly, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated April 2, 2019 (the "10 Day Notice"). At that time, rent in the amount of \$1,400.00 was outstanding. The 10 Day Notice was served on the Tenant by posting it on the door of the Tenant's rental unit on April 2, 2019. A signed Proof of Service document confirming service in this manner was witnessed by M.P. was submitted in support.

The Landlord testified that outstanding rent due on April 1, 2019, was paid on April 13, 2019. The Landlord confirmed that rent due on May 1, 2019, was paid on time. The Tenant continues to occupy the rental unit.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Based on the unchallenged and affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Landlord requested an order of possession. In this case, the Landlord testified, and I find, that the 10 Day Notice was served on the Tenant by leaving a copy attached to the door of the Tenant's rental unit on April 2, 2019. Pursuant to sections 88 and 90 of the *Act*, documents served in this manner are deemed to be received 3 days later. I find the Tenant is deemed to have received the 10 Day Notice on April 5, 2019. Accordingly, pursuant to section 46(4) of the *Act*, the Tenant had until April 10, 2019, to either pay rent in full or to dispute the 10 Day Notice by filing an application for dispute resolution. The Landlord testified the Tenant paid the outstanding rent on April 13, 2019, after the deadline to do so set out in section 46(4) of the *Act*. Further, there is insufficient evidence before me to find that the Tenant disputed the 10 Day Notice. As a result, pursuant to section 46(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. Therefore, the Tenant is over holding. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

The Landlord advised that rent has been paid and is up-to-date. Therefore, a monetary order for unpaid rent is not necessary. However, having been successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. I order that the Landlord is entitled to retain \$100.00 from the security and pet damage deposits in satisfaction of the filing fee.

Conclusion

The Landlord is granted an order of possession, which will be effective two (2) days after it is served on the Tenant. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

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: May 28, 2019

Residential Tenancy Branch