



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNDC MNSD FF

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 and utilities pursuant to section 55;
- a monetary order for unpaid rent and compensation for loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenants did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenants to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on March 20, 2019, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to each of the tenants by registered mail. The landlord provided registered mail receipts and tracking number(s) in support of service.

Based on the above evidence, I am satisfied that the tenants were deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenants.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent and for loss?

Is the landlord entitled to retain all or a portion of the tenants security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenants moved into this rental unit on October 15, 2018 for this tenancy which formally began on November 1, 2018 as per the lease agreement. The monthly rent is \$2200.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1100.00 and a pet deposit of \$1100.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on March 6, 2019 the tenants were served with the 10 Day Notice by posting a copy to the door of the rental premises. A witnessed proof of service of the 10 Day Notice was provided with the application.

The landlord testified that the tenants did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice.

The landlord testified that the tenants failed to pay March, April and May 2019 rent nor have they vacated the rental unit. The landlord is also claiming late fees in the amount of \$25.00 for each of these months as per the tenancy agreement. The landlord testified the tenant did make a partial payment in the amount of \$1300.00 on April 13, 2019 and were issued a receipt for use and occupancy only.

The landlord testified there is an outstanding balance of rent and late fees in the amount of \$5450.00.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of 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, as in the present case, 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.

Based upon the undisputed testimony of the landlord and witnessed proof of service document, I am satisfied that the tenants were deemed served with the 10 Day Notice on March 9, 2019, three days after its posting, pursuant to sections 88 & 90 of the Act.

I find that the Notice issued by the landlord complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires 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, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept the landlord's uncontested testimony and find the tenants failed to pay rent for March, April and May 2019. I calculate the balance of outstanding rent plus late fees to be \$5375.00 and not \$5450.00 as calculated by the landlord in the hearing ($\$2225.00 \times 3 = \6675.00 less $\$1300.00 = \5375.00).

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5475.00.

The landlord continues to hold a security deposit and pet deposit in total of \$2200.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3275.00.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 the landlord a Monetary Order in the amount of \$3275.00. 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 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: May 09, 2019

Residential Tenancy Branch