



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, a monetary order for unpaid rent and an unpaid security deposit, and for recovery of the filing fee paid for this application.

The landlord attended the teleconference hearing; the tenant did not attend.

The landlord testified and provided documentary evidence that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on March 15, 2019. The landlord supplied the tracking number of the registered mail and his evidence also showed the tenant failed to collect the registered mail.

Based upon the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee paid for this application?

Is the landlord entitled to a payment from the tenant for the security deposit?

Background and Evidence

The landlord provided evidence that he had a tenancy with another tenant, lasting approximately three years and during the course of that tenancy, the listed tenant here moved in with the original tenant. The verbal understanding was that the tenant would pay rent. The original tenant moved out of the rental unit in April 2018, and the tenant remained in the rental unit.

The landlord stated that the monthly rent was \$755.00 per month, payable on the first day of the month. The landlord also confirmed that he had no written tenancy agreement with either the original tenant or the tenant here, as the original tenant would not sign the same. The landlord also stated that the tenant has refused to pay a security deposit of \$377.50.

The landlord gave evidence that on March 2, 2019, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$6,627.50 as of March 1, 2019. The effective vacancy date listed on the Notice was March 12, 2019.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord stated that the tenant has not paid any rent since the Notice was issued and as of the date of the hearing, the tenant owed \$8,137.50 in unpaid rent. Though the landlord's original monetary claim was \$6,627.50, he requested to amend his claim to \$8,137.50.

As noted above, included in the landlord's original monetary claim of \$6,627.50 for unpaid rent listed in his application and on the Notice is the amount of \$377.50, which is the amount of the security deposit not paid by the tenant.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent due pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, as was the case here. The Notice is not effective earlier than ten days after the date the tenant received it. Under section 90 of the Act, a document served by attachment to the door or other conspicuous place is deemed received three days later. In this case, the Notice was attached on March 2, 2019, and deemed received on March 5, 2019. Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of March 12, 2019, on the Notice, is changed to March 15, 2019.

I find the landlord submitted sufficient, unopposed evidence to prove that the tenant was served the Notice, owed the rent listed, with the exception of the inclusion of a security deposit, did not pay the outstanding rent or file an application for dispute resolution in dispute of the Notice within five days of service. I therefore find the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, in this case, March 15, 2019 and is now overholding.

I therefore find that the landlord is entitled to an order of possession for the rental unit pursuant to section 55(2) of the Act, effective two days after service of the order upon the tenant.

As such, I grant the landlord a final, legally binding order of possession for the rental unit, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the rental unit pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

As to the landlord's monetary claim, pursuant to section 4.2 of the Residential Tenancy Branch Rules of Procedure ("ROP"), I allow the landlord to amend his application to include a claim for unpaid rent for April and for May 2019 of \$755.00 each, bringing his total, amended monetary claim to \$8,137.50. From this amount, I have deducted \$377.50, as that amount may not be listed on a 10 Day Notice and cannot be considered rent as it represents an unpaid security deposit. I therefore find that the landlord submitted sufficient, unopposed evidence to prove that the tenant owe the amount of \$7,760.00 in unpaid rent through May 2019. I grant the landlord a monetary award in the amount of \$7,760.50, pursuant to section 67 of the Act.

I also grant the landlord recovery of his filing fee of \$100.00, pursuant to section 72(1) of the Act.

Due to the above, I find the landlord is entitled to a total monetary award of \$7,860.00, comprised of outstanding rent of \$7,760.00 through May 2019 and the \$100.00 filing fee paid by the landlord for this application. I grant the landlord a monetary order for the amount of \$7,860.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent has been granted.

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 6, 2019

Residential Tenancy Branch