



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR FF / CNR OLC PSF LRE AAT

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to change the locks and/or to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant confirmed service of the landlord's application for dispute resolution.

The landlord testified that he has not been served with the tenant's application and that he only became aware that she had filed an application when he was filing his application.

The tenant confirmed that she did not serve her application on the landlord.

The hearing proceeded on the merits of the landlord's application only.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include loss of rent in the amount of \$13,000.00 for the month of June 2019. The landlord's monetary claim is for \$29,000.00 and the amendment would bring the total to \$42,000.00 which is above the \$35,000.00 small claims limit under the Act. Therefore, I have not allowed the amendment request.

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?

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

Background and Evidence

The tenancy began on January 2, 2019 with a monthly rent of \$13,000.00 payable on the 1st day of each month. The tenant paid a security deposit of \$6500.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on May 3, 2019 he served the tenant with the 10 Day Notice by posting a copy to the door of the rental premises.

The landlord testified that the tenant did not pay the outstanding rent amount of \$29,000.00 as indicated in the 10 Day Notice within five days of service of the Notice.

The landlord testified that this includes unpaid rent of \$3000.00 from March 2019, \$13,000.00 for April 2019 and \$13,000.00 for May 2019.

The tenant acknowledged that she did not pay the full amount of the rent arrears indicated, within five days, of receiving the 10 Day Notice. The tenant confirmed that the rent amount claimed by the landlord is outstanding. The tenant argued that she did not pay the rent due to the condition of the rental unit.

Analysis

I am satisfied that the tenant was served with the 10 Day Notice on May 3, 2019 as the acknowledged by the tenant in her application to dispute the Notice.

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 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 10 Day Notice.

Although the tenant filed an application to dispute the 10 Day Notice, the tenant failed to serve the landlord with her application. As such, the tenant's application is dismissed in its entirety.

I find that the 10 Day Notice 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 find that the tenant was obligated to pay monthly rent in the amount of \$13,000.00 but failed to pay rent in full for the months of March 2019 to May 2019. The tenant did not have a right under the Act to withhold or deduct any amounts from the rent payable under the lease agreement. I accept the landlord's claim for outstanding rent of \$29,000.00.

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 \$29,100.00.

The landlord continues to hold a security deposit of \$6500.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$22,600.00.

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 \$22,600.00. Should the tenant 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: June 21, 2019

Residential Tenancy Branch