



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

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, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing.

The landlord testified that the tenant was served the notice of dispute resolution package by registered mail on July 5, 2019. The landlord entered into evidence the Canada Post receipt and tracking number to confirm this registered mailing. I find that the tenant was deemed served with this package on July 10, 2019, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

Amendment

The landlord's original application claimed unpaid rent in the amount of \$1,000.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$1,500.00.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$1,500.00.

Issues to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Is the landlord entitled to authorization to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the landlord, not all details of her respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord provided the following undisputed testimony. This tenancy began on February 1, 2019 and is currently ongoing. Monthly rent in the amount of \$500.00 is payable on the first day of each month. A security deposit was not paid by the tenant to the landlord.

The landlord testified that on June 2, 2019 she posted a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of June 20, 2019 (the "10 Day Notice") on the tenant's door. The landlord entered into evidence a witnessed proof of service

document stating that the 10 Day Notice was posted on the tenant's door on June 20, 2019.

The landlord testified that she also served the tenant with a copy of the 10 Day Notice via registered mail on June 29, 2019. The landlord entered into evidence the Canada Post receipt and tracking number to confirm this registered mailing.

The landlord testified that the tenant did not pay rent for March 2019, June 2019 or July 2019. The landlord testified that the tenant has made any rent payments since the 10 Day Notice was posted on the tenant's door.

The tenant did not file an application with the Residential Tenancy Branch to dispute the 10 Day Notice.

Analysis

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant by posting a copy on the tenant's door. Based on the landlord's testimony and the witnessed proof of service document, I find that service of the 10 Day Notice was effected on the tenant on June 5, 2019, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 88 of the *Act* states that a 10 Day Notice may be served on the tenant via registered mail. Based on the landlord's testimony and the Canada Post receipt entered into evidence, I find that service of the 10 Day Notice was effected a second time on the tenant on July 2, 2019, five days after its mailing, in accordance with sections 88 and 90 of the *Act*.

I accept the landlord's undisputed testimony that the tenant did not pay rent for the months of March 2019, June 2019 and July 2019.

In this case, the tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice.

In this case, this required the tenant to vacate the premises by June 20, 2019, as that has not occurred, I find that the landlord is entitled to a 2-day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the tenant was obligated to pay the monthly rent in the amount of \$500.00 on the first day of each month which she failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$1,500.00 in unpaid rent.

As the landlord was successful in her application I find that she is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a Monetary Order to the landlord in the amount of \$1,600.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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: July 25, 2019

Residential Tenancy Branch