



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SILVER TIP ESTATES INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPR, MNRL, 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 for the rental unit due to a One Month Notice to End Tenancy for Cause (the "Notice"), an order of possession due to a 10 Day Notice to End Tenancy for Unpaid Rent, a monetary order for unpaid rent, and for recovery of their filing fee paid for this application.

The landlord attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that he served the tenant with his Application for Dispute Resolution and Notice of Hearing by registered mail on June 27, 2019. The landlord provided the copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. He also said that he used the physical and mailing address for the tenant; however, the registered mail was returned to him marked "unclaimed". The Tracking Number is located on the style of cause page of this Decision.

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 hearing process was explained to the landlord and he was given an opportunity to ask questions about the hearing process. Thereafter, the landlord was provided the opportunity to present his evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the “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 of the rental unit?

Is the landlord entitled to monetary compensation from the tenant for unpaid rent?

Is the landlord entitled to recovery of his filing fee paid for this application?

Background and Evidence

The landlord submitted a copy of a document entitled “Contract to purchase between (seller) and (buyer)”. (names omitted)

The landlord submitted that the intent of the contract was for a two year, fixed term tenancy for a monthly rent of \$1,200.00, and at the end of the two years, the tenant could purchase the manufactured home. The contract also stated that the \$1,200.00 would be considered rent in the event the tenant failed to purchase the home.

The landlord submitted that the tenant paid a security deposit of \$600.00 at the beginning of the tenancy.

The landlord submitted that the tenant has been served four Notices to end the tenancy, including the 10 Day Notice to End Tenancy for Unpaid Rent and the Notice here.

The landlord did not submit copies of the 10 Day Notices, but submitted a copy of the Notice, showing a date of January 14, 2019, for an effective move-out date of March 1, 2019. The landlord submitted that he served the tenant with the Notice, on January 14, 2019, by delivering it to the tenant’s adult roommate.

The Notice served on the tenant sets out that the tenant had ten (10) days to file an application for dispute resolution in dispute of the Notice. It also sets out that if the tenant did not file such application within ten days, then the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the rental unit by the effective date of the Notice.

The cause as stated on the Notice alleged that the tenant is repeatedly late paying rent.

The landlord submitted that the tenant failed to pay rent for November and December, 2018, and January 2019, which prompted the landlord to issue the Notice. The landlord submitted also that the tenant has not paid rent at all for 2019, which is the reason he amended the application to increase his original monetary claim to include unpaid rent through August 2019.

The landlord's monetary claim originally was \$10,330.00, for unpaid rent and rent deficiencies of \$3,130.00 through December 2018, and \$7,200 for unpaid rent from January through June 2019. The landlord filed an amended application on June 27, 2019, increasing his monetary claim to \$12,130.00, to include a request for an anticipated loss of rent for July and half of August 2019.

During the hearing, the landlord requested to retain the tenant's security deposit for use in a potential monetary award.

I have no evidence before me that the tenant filed an application in dispute of the Notice.

Analysis

I have reviewed all the evidence and accept that the tenant was properly served with the Notice as declared by the landlord, per section 88(e) of the Act. I also find no evidence that the tenant applied to dispute the Notice.

I have reviewed the Notice and find it was completed in accordance with section 47 of the Act. I also find the 1 Month Notice was completed in the approved form and the content meets the statutory requirements under section 52 the Act.

As such, I therefore find the tenant is conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and that the landlord is entitled to an order of possession for the rental unit on that effective date of March 1, 2019.

As the effective date of the Notice has already passed, I find the landlord is entitled to an order of possession effective two days after service upon the tenant pursuant to section 55 of the Act.

If the tenant fails to vacate the rental unit pursuant to the terms of the order after being served with it, 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.

I find the landlord has submitted sufficient evidence to show the tenant owed rent and accumulated rent deficiencies through the month of December, 2018, in the amount of \$3,130.00 and unpaid rent for the months of January through August, 2019, in the amount of \$9,600.00, for a total amount of \$12,730.00. I therefore find the landlord is entitled to a monetary order in that amount.

I grant the landlord recovery of the filing fee of \$100.00.

Due to the above, I grant the landlord a monetary award of \$12,830.00 for unpaid rent and rent deficiencies of \$12,730.00 and the filing fee of \$100.00.

At the landlord's request, I direct him to retain the tenant's security deposit of \$600.00 in partial satisfaction of his monetary award of \$12,830.00.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$12,230.00.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary 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 subject to recovery from the tenant.

Conclusion

The landlord's application for an order of possession of the rental unit is granted.

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit of \$600.00 and they have been awarded a monetary order for the balance due, in the amount of \$12,230.00.

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: August 15, 2019

Residential Tenancy Branch