



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPR, MNRL, FFL

For the tenant: CNR, MNDCT, LRE, FFT

Introduction

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The landlord applied for an order of possession due to a 10 Day Notice to End Tenancy for Unpaid Rent (“Notice”) being issue to the tenant, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenant applied for an order cancelling the Notice issued by the landlord, an order suspending or setting conditions on the landlord’s right to enter the rental unit, a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, and for recovery of the filing fee paid for this application.

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

The landlord stated that she served the tenant her application for dispute resolution and notice of hearing letter by registered mail on August 9, 2019. The tracking number for the Canada Post registered mail is listed on the style of cause page of this Decision.

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

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

I have reviewed the oral and written 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.

Procedural matter-In the absence of the tenant to present his claim, pursuant to section 7.3 of the Rules, I dismiss the application of the tenant, without leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

The landlord submitted that this tenancy began on July 1, 2015, with the previous owner of the rental unit, that present monthly rent is \$1,752.00, and a security deposit of \$800.00 was paid by the tenant.

The landlord submitted that she purchased the rental unit and took ownership in July 2019, with the tenancy continuing; however, the tenant failed to pay rent for the month of August 2019.

The landlord submitted also that the parties entered into a Mutual Agreement to End the Tenancy on August 31, 2019. A copy of the Agreement was submitted by the landlord.

The landlord submitted that on August 8, 2019, she served the tenant the Notice, by registered mail, listing unpaid rent of \$1,752.00 owed as of August 1, 2019. The landlord provided a copy of the Notice.

The landlord asserted that since the issuance of the Notice, the tenant failed to pay the rent owed for August 2019.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

The Notice informed the tenant that he had five (5) days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

In this case, although the tenant did dispute the Notice by filing his application, he failed to attend the hearing on that application and it is dismissed without leave to reapply.

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 comply with their obligation under the Act and tenancy agreement, a landlord may serve a tenant a notice seeking an end to the tenancy, pursuant to section 46(1) of the Act, as was the case here.

Based upon the landlord's undisputed evidence, I find the tenant was served the Notice, that he owed the amount listed on the Notice under the tenancy agreement as unpaid rent, and that he failed to pay this rent.

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

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.

I also find that the landlord submitted sufficient evidence to show that the tenant owed rent of \$1,752.00 for the month of August, 2019. I therefore find the landlord is entitled to a monetary award of \$1,752.00 for unpaid rent.

I also grant the landlord a monetary award of \$100.00 for recovery of the filing fee paid for her application, for a total monetary award of \$1,852.00.

At the landlord's request, I direct her to retain the tenant's security deposit of \$800.00 in partial satisfaction of her monetary award of \$1,852.00.

I therefore grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$1,052.00.

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 and recovery of their filing fee is granted.

The tenant's application is dismissed, without leave to reapply.

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 30, 2019

Residential Tenancy Branch