



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 authority to retain the tenant's security deposit and pet damage deposit, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The landlords and the landlord's agent attended the telephone conference call hearing; the tenant did not attend.

The landlords and their agent were affirmed into the hearing and I proceeded to hear their testimony.

The hearing process was explained to the landlords and their agent and they were given an opportunity to ask questions about the hearing process. Thereafter, the landlord was provided the opportunity to present their 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.

Preliminary and Procedural Matters-Service of the hearing documents

The landlord's agent said that her husband served the tenant with their Application for Dispute Resolution and Notice of Hearing by attaching the documents to the tenant's door on July 25, 2019. The landlord's witness called into the teleconference hearing and provided his testimony, attesting to the date he posted the hearing and application documents on the tenant's door on July 25, 2019.

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(2) of the Act, which allows for service of the hearing documents in this manner when a landlord is seeking an order of possession of the rental unit.

As to the landlord's request for a monetary order, section 89(1) of the Act requires that the application for dispute resolution, which includes the notice of hearing, must be given, by personally handing the documents to the tenant or by registered mail to the tenant's address where they reside or to their forwarding address.

As the hearing documents were not served according to the requirements of section 89(1) of the Act, I dismiss the portion of the landlord's application for a monetary order for unpaid rent, with leave to reapply.

The hearing proceeded on the landlord's request for an order of possession of the rental unit.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit and to recover the filing fee?

Background and Evidence

The written tenancy agreement supplied by the landlord shows that this tenancy began on September 1, 2014, monthly rent payable by the tenant is \$1,100.00, due on the first day of the month, and a security deposit of \$550.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on June 29, 2019, the tenant was served with the Notice, by personal service, listing unpaid rent of \$1,050.00 as of June 27, 2018. The effective vacancy date listed on the Notice was left blank.

The landlord stated that the tenant did not pay the amount listed, although they collected the monthly rent for July 2019 on July 17, 2019. As of the date of the hearing, the tenant owed rent for August and September 2019.

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

Analysis

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

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.

The Notice informed the tenant that they had 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 conclusively 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.

Based upon the landlord's undisputed evidence, I find the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, that they owed the amount listed on the Notice as unpaid rent, and that they failed to pay this rent.

I therefore 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, pursuant to section 55(2) of the Act.

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 grant the landlord recovery of their filing fee of \$100.00, pursuant to section 72(1) of the Act and I direct the landlord to retain the amount of \$100.00 from the tenant's security deposit in satisfaction of recovery of the filing fee.

Conclusion

The landlord's application for an order of possession for the rental unit and recovery of the filing fee 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: September 19, 2019

Residential Tenancy Branch