



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute codes OPC MNR FF

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the landlord for review of a decision dated July 17, 2019. In the original decision, the landlord's application was dismissed with leave to reapply as neither party attended the original hearing. The original decision was subsequently suspended by way of a review consideration decision dated July 23, 2019 pending the outcome of this review hearing.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:25 a.m. to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord's agent J.M. testified that on July 31, 2019, a copy of the Application for Dispute Resolution, Notice of Review Hearing and a copy of the Review Consideration Decision was sent to the tenants by registered mail. The landlord provided a registered mail tracking number in support of service. The landlord advised the registered mail package was returned as unclaimed.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 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 but stopped paying rent. The landlord asked to amend his claim to include outstanding rent for the months of June 2019 through to September 2019. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

Should the original decision dated July 17, 2019 be confirmed, varied or set aside in relation to each of the following:

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The tenancy began in December 2017. The landlord's agent J.M. testified that the tenancy agreement was originally between the landlord and five students. In January 2019 the respondent S.S. (the "tenant") moved in with the five students. In mid-February 2019 the five students moved out leaving the tenant on his own. The landlord and the tenant entered into a verbal agreement to continue a tenancy. The tenant paid rent for the first couple months but stopped paying rent beginning in April 2019. The monthly agreed upon rent amount was \$2000.00 per month payable on the 1st day of each month.

The landlord A.K. testified that on May 1, 2019 he personally served the tenant with the One Month Notice to End Tenancy for Cause. The effective date on the One Month Notice was June 1, 2019. The tenant did not file an application to dispute this notice.

The landlord's amended monetary claim is for outstanding rent in the amount of \$12,000.00. The landlord testified that this includes unpaid rent for the six-month period of April 2019 through to September 2019.

Analysis

I am satisfied that the tenant was personally served with the One Month Notice to End Tenancy for Cause on May 1, 2019.

Pursuant to section 47 of the *Act*, the tenant may make a dispute application within ten days of receiving the One Month Notice. If, as in the present case, the tenant does not make an application for dispute within ten days, the tenant is conclusively presumed to have accepted that the tenancy ended on the “corrected” effective date of the Notice, June 30, 2019.

I find that the Notice issued by the landlord 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 accept the landlord’s uncontested evidence and claim for outstanding rent of \$12,000.00.

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 \$12,100.00.

Conclusion

The original decision dated July 17, 2019 is set aside and the landlord is granted an order of possession and monetary order as per below.

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 \$12,100.00. 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: September 24, 2019

Residential Tenancy Branch