



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP
 OPUM-DR, FFL

Introduction

This teleconference hearing was scheduled in response applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenant filed two applications to dispute a 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”) and for an Order for regular repairs to be completed. The Landlords applied for an Order of Possession based on a 10 Day Notice, for monetary compensation for unpaid rent/utilities, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

One of the Landlords was present for the teleconference hearing while no one called in for the Tenant during the approximately 22 minutes that the phone line was monitored. The Landlord was affirmed to be truthful in her testimony and confirmed that she served the Tenant by registered mail with the Notice of Dispute Resolution Proceeding package regarding their application and a copy of the Landlords’ evidence.

The Landlord provided a copy of the registered mail receipt in evidence and the tracking number is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was mailed on August 12, 2019 and returned to the sender after not being claimed. As such, I find that the Tenant is deemed served with the documents on August 17, 2019 pursuant to the deeming provisions of Section 90 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

The Landlord stated that she received the notice of hearing documents from the Tenant regarding both of the Tenant’s applications. However, she stated that she did not receive any evidence from the Tenant.

As the Tenant did not attend the hearing that was also scheduled regarding two applications filed by the Tenant, the Tenant's applications are dismissed, without leave to reapply. This decision will address the Landlords' application for an Order of Possession and for monetary compensation.

Preliminary Matters

The Landlords applied for compensation for unpaid rent and/or utilities in the amount of \$250.00 based on the first 10 Day Notice in dispute. However, at the hearing the Landlord stated that they are also seeking unpaid rent for August 2019 as indicated on the second 10 Day Notice disputed by the Tenant, as well as unpaid rent for September 2019.

I find that the Tenant should reasonably expect that the Landlord would be seeking compensation for additional unpaid rent/utilities while waiting for the scheduled hearing. As rent in the amount of \$1,100.00 is due on the first day of each month as per the tenancy agreement and as required by Section 26 of the *Act*, I find that the Tenant would have been aware of rent owing on August and September 1, 2019. Therefore, I do not find that it would unfairly prejudice the Tenant to amend the Landlords' application to add an additional claim for \$2,200.00 in rent for August and September 2019. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Are the Landlords entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities?

Are the Landlords entitled to monetary compensation for unpaid rent and/or utilities?

Should the Landlords be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was also confirmed by the tenancy agreement submitted into evidence. Although the tenancy agreement states that the tenancy started on August 19, 2018, the Landlord noted that this was the date the agreement was signed and that the tenancy started on September 1, 2018. Rent in the amount of \$1,100.00 is due on the first day of each month. The Landlord stated that the Tenant is responsible for 1/3 of the utilities which was also noted on the tenancy agreement. The Tenant paid a security deposit of \$550.00 at the start of the tenancy.

The Landlord testified that they posted a 10 Day Notice on the Tenant's door on July 21, 2019. A copy of the 10 Day Notice was submitted into evidence and states that \$250.00 in utilities was unpaid as due on June 20, 2019. The Landlord also submitted a 30-day demand letter into evidence dated June 20, 2019 which the Landlord stated was posted to the Tenant's door. The letter notes that the Tenant owes \$250.00 in unpaid utilities.

The Landlord stated that due to the fluctuating amounts due each month, they decided to charge the Tenant a flat rate and then calculate how much was owing to equal 1/3 of the bills. They stated that the monthly amount was initially \$100.00 but was changed to \$150.00 when some of the bills went up. The Landlord stated that the \$250.00 claimed is \$50.00 for March and April 2019 as well as \$150.00 for May 2019 that was unpaid by the Tenant.

The Landlord submitted copies of the utility bills into evidence as well as a document that outlines the amount owing by the Tenant each month which shows that the Tenant owes \$308.28 for 2019, although the Landlord is only seeking \$250.00 from the flat rate amount they were collecting.

The Landlord testified that another 10 Day Notice was served to the Tenant on August 2, 2019 and another one on September 2, 2019 due to unpaid rent for August and September 2019. Copies of both notices were submitted into evidence. The Landlord stated that they have not received any money towards August or September 2019 rent and therefore are owed \$2,200.00.

Analysis

The Tenant filed an Application for Dispute Resolution to dispute the 10 Day Notice dated July 21, 2019 and an application to dispute the 10 Day Notice dated August 2, 2019. However, as stated by rule 7.3 of the *Residential Tenancy Branch Rules of Procedure*, if a party does not attend the hearing the hearing may continue in their absence or the application may be dismissed.

As stated in Section 46(4) of the *Act*, a tenant has 5 days in which to dispute the 10 Day Notice or pay the outstanding rent/utilities. I accept the testimony of the Landlord that the outstanding amounts for utilities and rent are still not paid as of the date of the hearing. Although the Tenant applied to dispute the 10 Day Notice, as the Tenant did not attend the hearing, I dismiss both of the Tenant's applications, without leave to reapply.

I accept the undisputed testimony and evidence of the Landlord that the Tenant owes \$250.00 for unpaid utilities and \$2,200.00 in unpaid rent. Section 46(6) of the *Act* states the following:

(6) If

- (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
- (b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

I find evidence before me of a demand letter that was provided to the Tenant on June 20, 2019 and therefore find that the 10 Day Notice for unpaid utilities dated July 21, 2019 is valid.

Upon review the 10 Day Notice dated July 21, 2019, I find that the form and content comply with Section 52 of the *Act* and therefore find that the Landlords are entitled to an Order of Possession pursuant to Section 55 of the *Act*. I award the Landlords a 2-day Order of Possession.

I also accept the affirmed testimony of the Landlord regarding the amount of utilities and rent owing and therefore award the Landlord an amount of \$250.00 for utilities and \$2,200.00 for rent. As the Landlords were successful with the application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00 for

total compensation of \$2,550.00. The Landlord may retain the security deposit in the amount of \$550.00 and therefore is awarded a Monetary Order in the amount of \$2,000.00.

Conclusion

The Tenant's Applications for Dispute Resolution are dismissed, without leave to reapply.

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** 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.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a **Monetary Order** in the amount of **\$2,000.00** as outlined above. The Landlords are 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: September 26, 2019

Residential Tenancy Branch