



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR

Introduction

On August 9, 2019 the Landlord submitted an Application for Dispute Resolution (the “Application”). On August 26, 2019 the Landlord made an amendment to the Application and is seeking relief pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- a monetary order for unpaid rent or utilities;
- an order granting authorization to retain the security deposit;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on October 15, 2019 as a teleconference hearing. S.A. appeared for the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 10 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that S.A. and I were the only persons who had called into this teleconference.

S.A. testified the Application, Amendment to the Application, and documentary evidence package was served to the Tenant by registered mail on August 27, 2019. S.A. provided the registered mail tracking information in support. Based on the oral and written submissions of the Applicant, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on September 1, 2019, the fifth day after the registered mailing. The Tenant did not submit documentary evidence in response to the Application.

S.A. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 67 of the *Act*?
2. Is the Landlord entitled to an order of possession for unpaid rent, pursuant to Section 55 of the *Act*?

Background and Evidence

S.A. testified that she was unsure as to when the tenancy started. S.A. stated that the Tenant was required to pay rent in the amount of \$800.00 to the Landlord on the first day of each month. S.A. stated that the Tenant did not pay a security or pet damage deposit. S.A. stated that the Tenant vacated the rental unit on September 20, 2019, therefore, the Landlord is no longer seeking an order of possession for unpaid rent.

S.A. testified the Tenant did not pay rent in the amount of \$800.00 when due on August 1, 2019. Subsequently, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 2, 2019 (the "10 Day Notice") with an effective vacancy date of August 12, 2019. S.A. stated that the 10 Day Notice was served to the Tenant by posting it to the Tenant's door on August 2, 2019.

S.A. testified that the Tenant did not dispute the 10 Day Notice, nor pay the outstanding balance of rent owing. S.A. stated that the Tenant failed to pay rent when due for September 2019 as well. The Landlord is seeking a monetary order in the amount of \$1,600.00 for unpaid rent for August and September 2019.

As noted above, the Tenant did not attend the hearing to dispute the Landlord's evidence.

Analysis

Section 26 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 26 of the Act.

Section 46 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find based on the S.A.'s uncontested testimony that the Landlord served the 10 Day Notice dated August 2, 2019 with an effective vacancy date of August 12, 2019, to the Tenant by posting it to the Tenant's door on August 2, 2019. Pursuant to sections 88 and 90 of the Act, documents served in this manner are deemed to be received three days later. I find the Tenant is deemed to have received the 10 Day Notice on August 5, 2019.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until August 10, 2019 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the S.A's undisputed testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$800.00 for August 2019, and has also failed to pay rent when due for September 2019.

I find the Landlord has established an entitlement to a monetary award for unpaid rent for August and September 2019. Pursuant to section 67 of the Act, I find the Landlord is entitled to a monetary order in the amount of \$1,600.00.

Conclusion

The Tenant has breached the *Act* by not paying rent as required. The Landlord is granted a monetary order in the amount of \$1,600.00. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: October 15, 2019

Residential Tenancy Branch