



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for compensation for unpaid rent, for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Landlord and an advocate for the Tenant (the “Advocate”) were present for the hearing. The Advocate confirmed that she had authorization to speak on behalf of the Tenant as the Tenant was unable to attend the hearing. The Advocate confirmed that the Tenant received the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence. The Tenant did not submit any evidence prior to the hearing.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

Issues to be Decided

Is the Landlord entitled to compensation for unpaid rent?

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

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

Background and Evidence

The Landlord provided testimony that the tenancy began approximately six years ago. Current monthly rent is \$1,047.00 as indicated on a Notice of Rent Increase form submitted into evidence which took effect on August 1, 2018. Rent is due on the first day of each month. The Landlord stated that a security deposit was paid at the start of the tenancy but was unsure as to the exact amount. The Advocate was unable to confirm the tenancy details as stated by the Landlord.

The Landlord testified that the 10 Day Notice was served to the Tenant on July 11, 2019 by posting the notice in the Tenant's mailbox. The Advocate stated that the 10 Day Notice was posted on the Tenant's door on or around July 11, 2019 with service deemed on July 14, 2019.

A copy of the 10 Day Notice was submitted into evidence and indicates that \$1,080.00 was unpaid as due on July 1, 2019. The Landlord testified that this was \$1,047.00 for July 2019 rent as well as an amount from the Tenant underpaying the rent previously.

The Landlord submitted a spreadsheet of payments which shows the history of rent payments from September 2018 to August 2019. The Landlord testified as to a payment of \$1,050.00 on July 15, 2019, a payment of \$500.00 on August 9, 2019 and a payment of \$547.00 later in August 2019. The Landlord stated that September 2019 rent was paid but he has not received rent for October 2019. The Landlord stated that he did not receive notification that the Tenant had applied to dispute the 10 Day Notice.

The Advocate initially stated that the Tenant paid \$1,080.00 on July 15, 2019, but later confirmed that the Tenant paid \$1,050.00 on this date. She also stated that the Tenant paid \$577.00 on August 9, 2019 to cover the \$30.00 remaining from the 10 Day Notice and half of rent for August 2019.

The Advocate stated that the Tenant was short \$30.00 on July 15, 2019 when \$1,050.00 was paid but that the Landlord accepted this amount and therefore the Tenant assumed that the 10 Day Notice has been cancelled. The Advocate also noted that the Landlord did not indicate that the rent was being accepted for 'use and occupancy only'. The Advocate stated that this is why the Tenant did not apply to dispute the 10 Day Notice.

While the Landlord stated that October 2019 rent is owing as well as some underpayment amounts from previous months, however he was unable to clarify the exact amount still owing.

Analysis

As stated in Section 46(4) of the *Act*, a tenant has 5 days to dispute a 10 Day Notice or to pay the outstanding rent. The parties were in agreement that the Tenant did not apply to dispute the 10 Day Notice. However, regarding payment of rent, although the parties at first presented conflicting testimony they ultimately agreed that \$1,050.00 was paid on July 15, 2019. I find that this was not the full rent owing as per the 10 Day Notice which states that \$1,080.00 was outstanding.

Had the Tenant not agreed with the amount stated as owing on the 10 Day Notice, the Tenant had the right to dispute the notice within 5 days as per Section 46 of the *Act*. However, as the Tenant did not pay the full amount owing and did not apply to dispute the notice, I find that Section 46(5) of the *Act* applies as follows:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I also note that regardless of the Advocate's claim that the Landlord accepted future rent payments and therefore indicated that the tenancy was reinstated, I find that I do not have sufficient evidence before me to establish that the Landlord intended to reinstate the tenancy. Instead, I find that the *Act* is clear that the outstanding rent must be paid within 5 days, and that this information is also provided on the 10 Day Notice.

Therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends by not paying the full rent owing within 5 days of receipt of the 10 Day Notice. I also note that although further rent payments were made in August 2019, this was beyond the 5 days provided for the outstanding rent payment to cancel the 10 Day Notice.

Upon review of the 10 Day Notice, I find that the form and content comply with Section 52 of the *Act*. As such, pursuant to Section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession. I grant the Landlord a two-day Order of Possession.

Regarding the Landlord's claim for unpaid, I find that I do not have sufficient evidence to establish the amount owing. The Landlord testified as to October 2019 rent owing but

was unsure as to the exact amount still owing from the 10 Day Notice after payments were made in August 2019. The Advocate also presented differing testimony on the amounts paid in August 2019 than what was stated by the Landlord. Therefore, I am not satisfied as to the amount owing and as such, I dismiss the Landlord's claim for unpaid rent with leave to reapply.

As the Landlord was partially successful with the Application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee paid for the application in the amount of \$100.00. The Landlord may retain this amount from the security deposit.

Conclusion

Pursuant to Section 55 of the *Act*, I grant an Order of Possession to the Landlord 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 Section 72 of the *Act*, I grant the Landlord the recovery of the filing fee in the amount of \$100.00. The Landlord may retain \$100.00 from the security deposit at the end of the tenancy.

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 25, 2019

Residential Tenancy Branch