



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNDC MNSD FF / CNR FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. The parties confirmed service of the respective applications for dispute resolution, including the notice of hearing and evidence on file.

Issues

Is the landlord entitled to an order of possession for unpaid rent or should the 10 Day Notice be cancelled?

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

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenancy began on March 1, 2019 with a monthly rent of \$1000.00 payable on the 1st day of each month. The tenants paid a security deposit of \$800.00 at the start of the tenancy. The parties agreed that \$300.00 of this security deposit was subsequently applied towards rent. The landlord continues to retain the balance of \$500.00.

The landlord testified the tenants failed to pay the \$1000.00 rent payable on August 1, 2019. The landlord testified that on August 28, 2019 he personally served the tenants with the 10 Day Notice. The amount of rent outstanding as per the 10 Day Notice was \$1050.00 which also included \$50.00 from July 2019.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated on the 10 Day Notice within five days of service of the Notice. The landlord testified the outstanding balance has since been paid in full but well after the five-day period. The landlord testified that the rent has been paid in full up to the end of October 2019 and the tenants have been issued receipts for use and occupancy only.

The tenants acknowledged service of the 10 Day Notice and that they did not pay the full amount of the arrears indicated, within five days, of receiving the Notice. The tenants submitted that they were unable to pay rent due to extenuating circumstances and that they had a verbal agreement with the landlord to pay late.

The landlord disputed having any verbal agreement with the tenants to allow rent to be paid late.

Analysis

I am satisfied that the tenant was personally served with the 10 Day Notice on August 28, 2019 pursuant to section 88 of the Act.

Section 46 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

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.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants application must be dismissed as the tenants acknowledged

rent was not paid in full within 5 days after receiving the notice nor did the tenant have a right under this Act to deduct all or a portion of the rent. The tenants provided insufficient evidence of having an agreement with the landlord to pay rent late.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld the landlord must be granted an order of possession if the notice complies with all the requirements of Section 52 of the *Act*.

I find that the 10 Day 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.

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 \$100.00.

The landlord continues to hold a security deposit of \$500.00. I allow the landlord to retain \$100.00 from the security deposit in full satisfaction of the monetary award pursuant to section 38 of the Act.

Conclusion

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.

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: November 04, 2019

Residential Tenancy Branch