



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent and utilities 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;

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:50 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on November 28, 2019, a copy of the Application for Dispute Resolution and Notice of Hearing was slipped under the tenant's door.

Based on the above evidence, I am satisfied that the tenant was 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.

Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

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?

Background and Evidence

The tenancy began for this bedroom in a shared accommodation unit began on April 3, 2018 with a monthly rent of \$400.00 payable on the 1st day of each month. The tenant paid a security deposit of \$200.00 at the start of the tenancy.

The landlord submitted a copy of a 10 Day Notice dated October 23, 2019. The 10 Day Notice indicates an outstanding rent amount of \$1200.00 which was due on October 1, 2019. The 10 Day Notice provides that the tenant had five days from the date of service to pay the outstanding rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective date of the Notice.

The landlord testified that on October 23, 2019 the tenant was served with the 10 Day Notice by depositing a copy in the mailbox of the rental unit.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the 10 Day Notice within five days of service of the Notice. The landlord testified that the outstanding rent as per the 10 Day Notice was for the months of August, September and October 2019 in the amount of \$400.00 per month.

The landlord was not seeking a monetary order for the full amount outstanding but rather just to offset the \$200.00 security deposit.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent 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. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

I am satisfied that the tenant was served with the 10 Day Notice on October 26, 2019, three days after being deposited in the mailbox, pursuant to sections 88 & 90 of the Act. The tenant would have had until October 31, 2019 to pay the outstanding amount as per the 10 Day Notice which he failed to do.

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 that the tenant owes \$1200.00 in rent. The landlord is granted a monetary award of \$200.00 as requested.

The landlord continues to hold a security deposit of \$200.00. I allow the landlord to retain 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: January 17, 2020

Residential Tenancy Branch